

Corporate misconduct – individual consequences

Global enforcement focuses the spotlight on executive integrity

14th Global Fraud Survey

The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. A yellow triangle is positioned above the 'Y', pointing downwards towards the letters.

Building a better working world

Contents

Foreword	3
Executive summary	4
Combating corruption as a global priority	6
Justifying unethical behavior and misconduct	12
CFOs in the spotlight	14
Bolstering defenses	20
Regional insights	28
Africa	30
Brazil	32
China	34
Eastern Europe	36
India	38
Conclusion	41
Survey approach	42
Detailed results	44
Contact information	46

Foreword

In the aftermath of recent major terrorist attacks and the revelations regarding widespread possible misuse of offshore jurisdictions, and in an environment where geopolitical tensions have reached levels not seen since the Cold War, governments around the world are under increased pressure to face up to the immense global challenges of terrorist financing, migration and corruption. At the same time, certain positive events, such as the agreement by the P5+1 group (China, France, Russia, the United Kingdom, the United States, plus Germany) with Iran to limit Iran's sensitive nuclear activities are grounds for cautious optimism.

These issues contribute to volatility in financial markets. The banking sector remains under significant regulatory focus, with serious stress points remaining. Governments, meanwhile, are increasingly coordinated in their approaches to investigating misconduct, including recovering the proceeds of corruption. The reason for this is clear. Bribery and corruption continue to represent a substantial threat to sluggish global growth and fragile financial markets.

Law enforcement agencies, including the United States Department of Justice and the United States Securities and Exchange Commission, are increasingly focusing on individual misconduct when investigating impropriety. In this context, boards and executives need to be confident that their businesses comply with rapidly changing laws and regulations wherever they operate.

For this, our 14th Global Fraud Survey, EY interviewed senior executives with responsibility for tackling fraud, bribery and corruption. These individuals included chief financial officers, chief compliance officers, heads of internal audit and heads of legal departments. They are ideally placed to provide insight into the impact that fraud and corruption is having on business globally.

Despite increased regulatory activity, our research finds that boards could do significantly more to protect both themselves and their companies.

Many businesses have failed to execute anti-corruption programs to proactively mitigate their risk of corruption. Similarly, many businesses are not yet taking advantage of rich seams of information that would help them identify and mitigate fraud, bribery and corruption issues earlier.

Between October 2015 and January 2016, we interviewed 2,825 individuals from 62 countries and territories. The interviews identified trends, apparent contradictions and issues about which boards of directors should be aware.

Partners from our Fraud Investigation & Dispute Services practice subsequently supplemented the Ipsos MORI research with in-depth discussions with senior executives of multinational companies. In these interviews, we explored the executives' experiences of operating in certain key business environments that are perceived to expose companies to higher fraud and corruption risks. Our conversations provided us with additional insights into the impact that changing legislation, levels of enforcement and cultural behaviors are having on their businesses. Our discussions also gave us the opportunity to explore pragmatic steps that leading companies have been taking to address these risks.

The executives to whom we spoke highlighted many matters that businesses must confront when operating across borders: how to adapt market-entry strategies in countries where cultural expectations of acceptable behaviors can differ; how to get behind a corporate structure to understand a third party's true ownership; the potential negative impact that highly variable pay can have on incentives to commit fraud and how to encourage whistleblowers to speak up despite local social norms to the contrary, to highlight a few.

Our survey finds that many respondents still maintain the view that fraud, bribery and corruption are other people's problems despite recognizing the prevalence of the issue in their own countries. There remains a worryingly high tolerance or misunderstanding of conduct that can be

considered inappropriate – particularly among respondents from finance functions. While companies are typically aware of the historic risks, they are generally lagging behind on the emerging ones, for instance the potential impact of cybercrime on corporate reputation and value, while now well publicized, remains a matter of varying priority for our respondents. In this context, companies need to bolster their defenses. They should apply anti-corruption compliance programs, undertake appropriate due diligence on third parties with which they do business and encourage and support whistleblowers to come forward with confidence. Above all, with an increasing focus on the accountability of the individual, company leadership needs to set the right tone from the top. It is only by taking such steps that boards will be able to mitigate the impact should the worst happen.

This survey is intended to raise challenging questions for boards. It will, we hope, drive better conversations and ongoing dialogue with stakeholders on what are truly global issues of major importance.

We acknowledge and thank all those executives and business leaders who participated in our survey, either as respondents to Ipsos MORI or through meeting us in person, for their contributions and insights.

Sincerely,



David L. Stulb
Global Leader
Fraud Investigation & Dispute Services

Executive summary

Global commitments to combating corruption and enhanced cooperation by international law enforcement agencies have increased the pressure on companies to mitigate fraud, bribery and corruption risks. While many businesses have made significant progress in tackling these issues, there remains a persistent level of unethical conduct.

Boards need to be aware that regulators are enforcing anti-corruption legislation with vigor, and are increasingly focused on individual misconduct. Boards must respond and confirm that they are doing enough to protect their business from these risks - or both board members and their employees may be held personally responsible for misconduct under their watch.

Combating corruption as a global priority

There is an unprecedented level of support for combating bribery and corruption, from both governments and multilateral institutions.

Such cooperation has led to enhanced collaboration among law enforcement agencies in 2016, with numerous high-profile prosecutions in the past year. There have also been concerted efforts to apply international standards on transparency of company ownership, including by the World Bank and by the Group of 20 (G20) member countries, as part its wider focus on corruption under the Chinese presidency in 2016.

Our survey results show that such initiatives enjoy popular support:



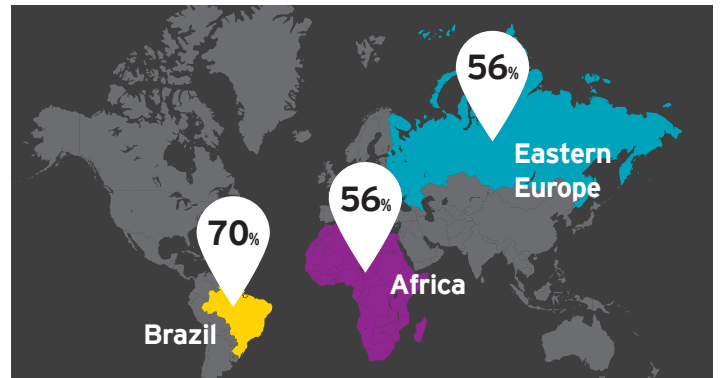
91%

of respondents believe it is important to understand the ultimate beneficial ownership of the entities with which they do business

Bribery and corruption as an ongoing challenge

Our survey identified a perception in emerging markets that individuals responsible for corruption are not held accountable:

Respondents who believe that governments are willing to prosecute, but are not effective in securing convictions



Globally, bribery and corruption are still perceived to occur widely - with a perception that corruption has worsened in developed markets since our last survey

39%



of respondents considered bribery and corrupt practices to happen widely in their country, with no improvement since our last survey

21%



of respondents reported that such behaviors were widespread in developed markets, compared to 17% in our last global survey

32%



of our respondents reported that they had personal concerns when asked about bribery and corruption in their workplace

Spotlight on CFOs

Our survey of 2,825 executives identified that a significant number are willing to justify unethical behavior when under financial pressure.

Almost half of all respondents could justify unethical behavior to meet financial targets, a greater proportion than the 36% that could justify such behavior to help a company survive in an economic downturn.



42% could justify unethical behavior to meet financial targets

While not consistent with the people with whom we work - our survey found that an alarming number of CFOs and finance team members would be willing to engage in unethical behaviors:

16%



of finance team members below the CFO would make a cash payment to win or retain business - higher than 13% of all respondents

7%



of finance team members below the CFO would misstate financial performance - nearly double the proportion of all respondents which stood at 4%

The apparent willingness of some CFOs and finance team members to justify such behaviors is concerning, given the reliance that boards and investors place on CFOs and finance team members to provide accurate financial information.

Some CFOs also seem to lack appropriate risk awareness, with only 41% of CFOs viewing cybercrime as a concern.

What does this mean for boards?

The prevalence of such behaviors places businesses at continued risk of illegal conduct, which could lead to subsequent enforcement action. Regulators are focusing particularly on financial fraud, including the manipulation of books and records.

Regulators are also increasingly focusing their investigations on individual culpability when looking at corporate misconduct. In September 2015, the United States Department of Justice (DoJ) issued prosecutorial guidelines which outlined that, in the context of a DoJ investigation, companies are required to provide the DoJ with any evidence implicating employees in wrongdoing.

Boards should stay alert to fraud, bribery and corruption risks and reinforce expectations of acceptable behavior throughout their organizations. Almost half of our respondents did not believe that boards had an adequate understanding of what the specific risks were to their business.



83% The majority of our respondents support the prosecution of individual executives - with 83% of respondents viewing enforcement against management as an effective deterrent

What does good look like?

With a global focus on combating fraud, bribery and corruption, and regulators scrutinizing executive behavior, companies need to do more. Businesses should take steps to minimize the risk of corruption in their operations, so that it is quickly identified and mitigated in the event that it occurs:

- ▶ Adequately resource compliance and investigations functions, so that they can proactively engage before regulatory action
- ▶ Establish clear whistleblowing channels and policies that not only raise awareness of reporting mechanisms, but encourage employees to report misconduct
- ▶ Undertake regular fraud risk assessments, including an assessment of potential data-driven indicators of fraud and/or forensic data analytics (FDA) indicators of fraud
- ▶ Develop a cyber breach response plan that brings all parts of the business together in a centralized response structure
- ▶ Undertake robust anti-corruption due diligence on third parties, before entering into a business relationship
- ▶ Execute a comprehensive anti-corruption compliance program that incorporates FDA and tailored bribery and corruption training

Companies and their boards need to deliver on these priorities. The risks faced by companies as they continue to expand their global reach are evolving, and the scrutiny under which businesses and individuals now come is greater than ever. Boards must respond proactively and be able to demonstrate that they are stepping up to the challenge.

Combating corruption as a global priority

Never before have governments and multinational institutions cooperated so extensively in combating bribery and corruption. The transnational nature of the issue led the G20 major economies to recognize bribery and corruption as an important impediment to economic growth and the group's focus on corruption has continued under its Chinese presidency in 2016.

The G20 outlined its priorities in the "2015-2016 G20 Anti-Corruption Action Plan" identifying key areas where economies and multinational organizations must strengthen their cooperation.



of respondents believe it is important to know the ultimate beneficial ownership of the entities with which they do business

Among the issues identified, the G20 highlighted the abuse of legal and corporate structures to hide or conceal criminal activity as a "critical issue in the global fight against corruption." It committed to increasing transparency over the beneficial ownership of companies and assets through the application of international standards on the beneficial ownership of legal persons and arrangements set by the intergovernmental body, the Financial Action Task Force.

The respondents to our survey suggest this move has popular support - 91% of respondents believe it is important to know the ultimate beneficial ownership of the entities with which they do business.

The World Bank too is aligned with the G20 approach, issuing guidance in 2015 requiring greater beneficial ownership transparency in its contracting processes. Again, the respondents to our survey indicate that they believe this level of transparency would help mitigate the risk of fraud, bribery and corruption, with 83% supportive of the World Bank's guidance.

Figure 1: Support for transparency over company ownership

Global	91%
Africa	97%
W. Europe	94%
N. America	94%
Oceania	94%
S. America	94%
Middle East	91%
Eastern Europe	87%
Japan	86%
Far East	85%
India	84%

Q. How important, if at all, do you believe it is to know who ultimately owns and controls the entities that you do business with? Proportion of respondents answering fairly or very important.

Base: Global (2,825); W. Europe (850); Eastern Europe (650); Middle East (175); Africa (150); India (50); N. America (100); S. America (250); Far East (500); Oceania (50); Japan (50)

SEC cross-border enforcement



The G20 has committed to increased international cooperation in areas of particular exposure such as public procurement and customs controls. Major companies from the G20 members, coming together through the Business 20 (B20) platform, have shown their support for these priorities too.

The work of the G20, B20 and others is having an effect. National governments have listened, and cross-border cooperation in enforcement has risen to an unprecedented level. In one recent example, the U.S. Securities and Exchange Commission (SEC) disclosed that it had been working alongside 13 other jurisdictions in pursuing a case involving over US\$100m of alleged bribes in multiple tax havens.

The work of the G20 and others is having an effect. There has been an unprecedented level of cross-border cooperation in enforcement.

“Requiring that all legal entity bidders disclose information on the real people who own or control them would foreclose one of the most common corruption schemes that enable both bidders to hide their conflicts of interest and government officials to illegally enrich themselves.”

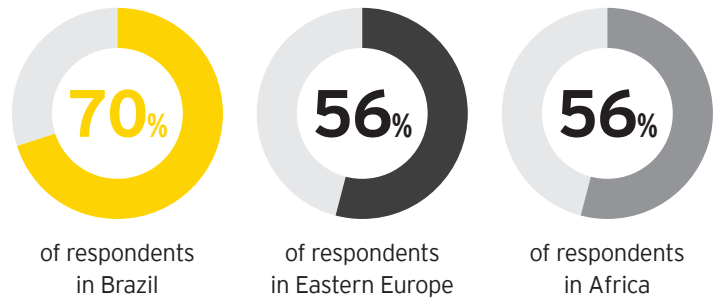
B20 Anti-Corruption Task Force, September 2015

Ongoing challenges of bribery and corruption

Despite the sharp focus of governments on bribery and corruption, and the increasingly coordinated efforts to manage it, the scale of the problem remains significant. Clearly, not all jurisdictions are equally successful in tackling corruption.



Our survey reveals a perceived lack of effective enforcement in key emerging markets - with 70% of respondents in Brazil, 56% in Eastern Europe and 56% in Africa believing governments are willing to prosecute, but are not effective in securing convictions.



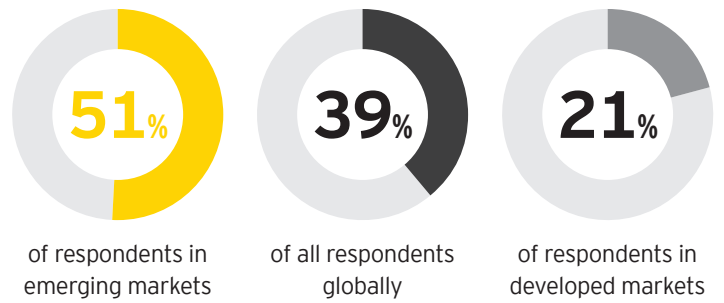
believe that governments are willing to prosecute, but are not effective in securing convictions

The responses in Brazil are surprising given recent high-profile enforcement actions such as the *Lava Jato* investigation. Brazilian anti-corruption institutions, such as the Council for Economic Defense, the Brazilian antitrust agency, have also received global recognition. This may indicate that such negative perceptions take time to catch up with events.

Globally, bribery and corruption are still perceived to occur widely, and our respondents do not believe that the situation has improved since our last survey.

Globally, bribery and corruption are still perceived to occur widely, and our respondents do not believe that the situation has improved since our last survey in 2014. Thirty-nine percent of those surveyed considered bribery and corrupt practices to happen widely in their countries, consistent with 38% in our last survey.

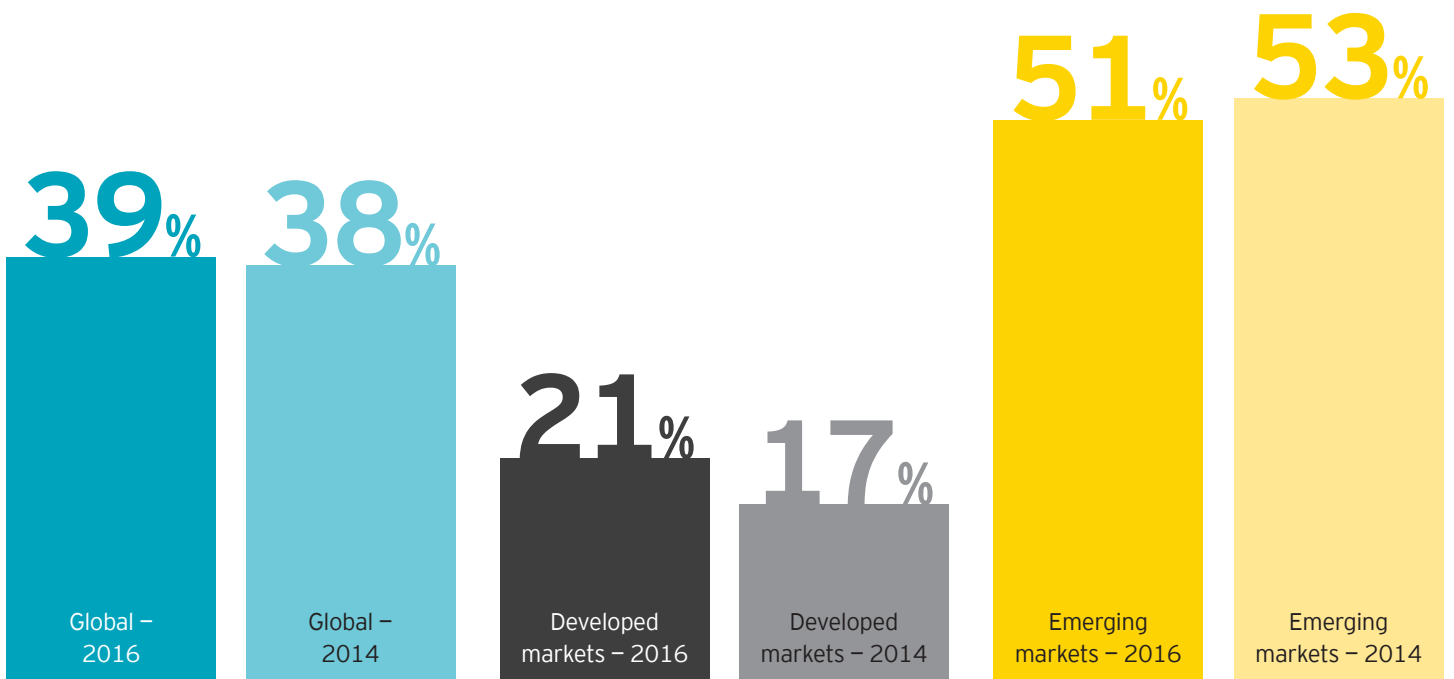
The situation appears to have deteriorated in developed markets where 21% of respondents reported that such behaviors were widespread, increasing from 17% in our last survey. This contrasts with the trend seen in emerging markets, where our results indicate a small improvement, with the perceived prevalence of bribery and corruption down from 53% to 51%.



believe that bribery and corruption are still perceived to occur widely in their countries

The worsening view in developed markets may reflect an increased awareness of bribery and corruption in those markets. This may be a result of numerous high-profile corruption cases affecting major U.S. and European corporations.

Figure 2: Bribery and corruption: an ongoing challenge



Q. For each of the following, can you indicate whether you think it applies, or does not apply, to your country or industry?
Bribery/corrupt practices happen widely in business in this country.

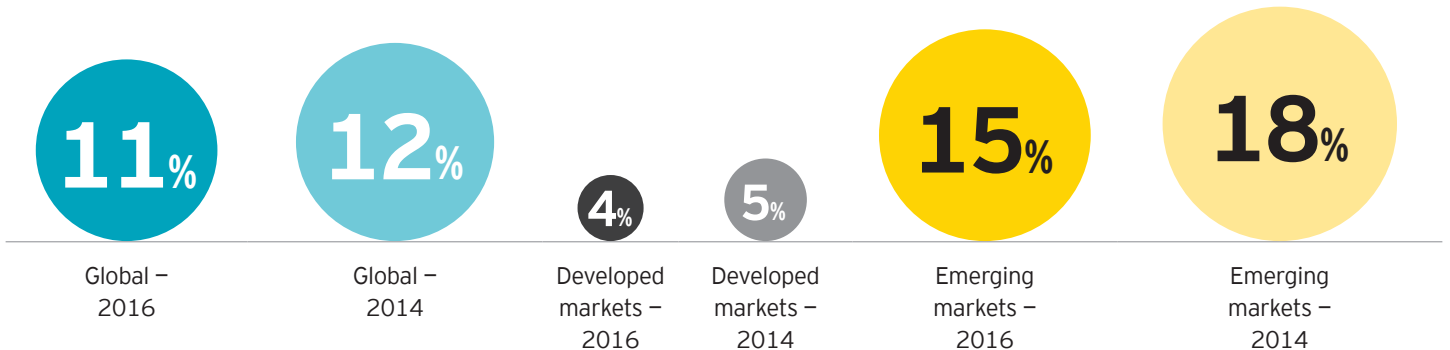
Base: 14th global (2,825); 13th global (2,719); 14th developed (1,103); 13th developed (1,103); 14th emerging (1,725); 13th emerging (1,616)

Someone else's problem?

Consistent with previous years, our respondents continue to believe that bribery and corruption are less likely in their business sector. Only 11% of respondents stated that bribery and corruption happened in their sector, far lower than the 39% of respondents who believed that it happened in their country.



Figure 3: Bribery: not in my sector



Q. For each of the following, can you indicate whether you think it applies, or does not apply, to your country or industry? In our sector, it is common practice to use bribery to win contracts.

Base: 14th global (2,825); 13th global (2,719); 14th developed (1,100); 13th developed (1,103); 14th emerging (1,725); 13th emerging (1,616)

This sector-level perception also appears at odds with our respondents' observations regarding their personal experience of such risks, with 32% of individuals recognizing that they have had concerns over bribery and corruption at work. Could it be that certain respondents remain unclear as to what constitutes impropriety or that they do not recognize certain corrupt actions as such?

Our survey indicates that a persistent minority of executives continues to justify certain behaviors, including making corrupt payments, when facing an economic downturn or in an effort to improve the perceived financial performance of their company. We highlight significant areas of concern regarding executive behaviors that should raise alarm bells for boards and other stakeholders.



Understanding and managing rising risks associated with terrorist finance

Financial institutions and global corporations should confirm that their risk management functions and remediation efforts consider the potential risks associated with terrorist financing, which remains a financial crime enforcement priority.

Reports surrounding the operational resiliency of foreign terrorist organizations have considerably heightened international efforts and expectations of business relating to disrupting the efforts of terrorist organizations to finance their operations.

Terrorist fundraising - which previously largely relied on individuals and organizations - has given way to informal economies that allow groups to, at least partially, self-fund operations and support other groups and individuals via opaque networks.

Given this evolving landscape, the touch points between the formal and informal economies have become more important. Financial institutions and global corporations should take proactive steps not only to understand their terrorist financing-related risk (internally and from a client perspective), but to take action to mitigate such risks.

Some specific areas that companies should consider in light of the rise of terrorist financing threats in 2016 include, but are not limited to:

- ▶ Undertake an assessment of your organization's terrorist financing risk; consider an internal working group or task force focused on combating terrorist financing
- ▶ Review your third-party relationships - many different types of third-parties can serve as a conduit for terrorist financing; the problem is more complex than banks merely monitoring their correspondent networks
- ▶ Adopt social media monitoring capabilities and leverage in-house and third-party data to proactively - and forensically - identify terrorist finance-specific red flags

The risk that terrorist financing poses to organizations has increased significantly in recent years. To address this trend, the international community is mobilizing - including the United Nations, the Financial Action Task Force and a number of other multilateral and bilateral working groups. The private sector must also mobilize, and the first step is to look internally and ask: "Are we really on top of terrorist financing-specific risks?"

Justifying unethical behavior and misconduct

Our survey found that a significant minority of executives continue to justify unethical acts to improve a company's performance. When presented with a series of options, more than one-third would be willing to justify inappropriate conduct in an economic downturn, while almost half would justify such conduct to meet financial targets.

While the behaviors that these respondents can rationalize differ between regions, they should be deeply concerning to all companies.

More than one-third would be willing to justify inappropriate conduct, while almost half would justify such conduct to meet financial targets.



1 in 10

One in 10 respondents would make a cash payment to win or retain business in an economic downturn. In some jurisdictions, such as the Far East, a significantly higher proportion of respondents would do so, with 1 in 4 executives able to justify such payments



4%

Four percent, a significant minority of respondents, could justify misstating financial performance in an economic downturn, peaking at 1 in 10 in Africa



16%

Sixteen percent of respondents would change the assumptions determining valuations and reserves, rising to 1 in 4 in Japan



11%

Eleven percent of respondents would extend the monthly reporting period, peaking at 26% in India



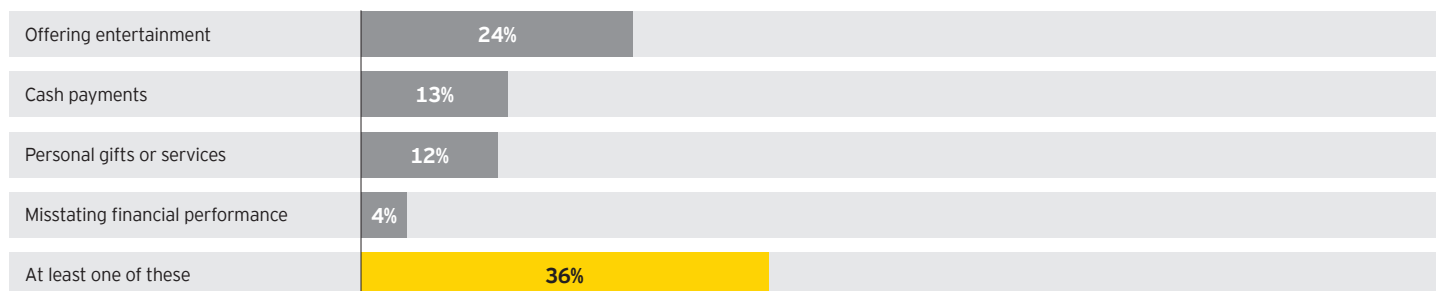
7%

Seven percent of global respondents were willing to backdate contracts, with 10% of respondents in Eastern Europe able to justify such behavior

“The financial reporting area will continue to be a high priority for our enforcement program. Investors depend on comprehensive and accurate financial reporting, and so our fundamental objective is to raise the bar of compliance by issuers and their auditors and we will use all of our tools to do so.”

Mary Jo White, U.S. Securities and Exchange Commission

Figure 4: Willingness to act unethically



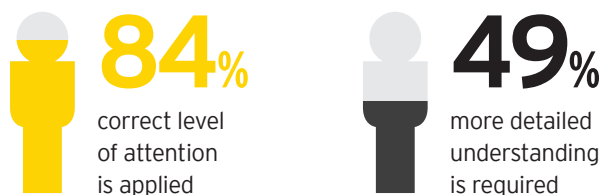
Q. Which, if any, of the following do you feel can be justified if they help a business survive an economic downturn?

Base: All respondents (2,825)

Financial fraud under the spotlight

The continued prevalence of such unethical behavior places businesses at risk of illegal conduct, which could lead to subsequent enforcement action. Board members and companies' audit committees should be aware that regulators are focusing on these behaviors and are keen to hold individuals accountable.

Respondents believing that the board is giving the correct level of attention to fraud, bribery and corruption risks, but often need to understand their business better



Building on the creation of the Financial Reporting and Audit Group in 2013, the SEC is investigating fraudulent or improper financial reporting with renewed vigor. Between 2013 and 2015, the SEC more than doubled the number of financial reporting and disclosure actions, greatly increasing the number of parties charged with offenses.

In her February 2016 address to the Practising Law Institute, SEC Chair Mary Jo White confirmed that the SEC would continue to focus on inadequate controls and failures in financial reporting. The SEC has made it clear that the gatekeepers of financial reporting, including audit committee members and external auditors, will be under increased scrutiny. Those whom the SEC finds to have failed to reasonably carry out their responsibilities are likely to face enforcement action.

Despite 84% of respondents believing that the board is giving the correct level of attention to fraud, bribery and corruption-related issues, almost half believe that boards need a more detailed understanding of the business if it is to be an effective safeguard against these risks. In this context, awareness of risks is not sufficient - companies need to adapt and strengthen their existing controls to mitigate them.

Worryingly, deeper analysis of our survey results identifies that many respondents who are CFOs and finance team members, individuals with key roles in protecting companies from risks, appear ready to justify unethical conduct.

The apparent willingness of these respondents to act unethically when under financial pressure is concerning. Could certain compensation arrangements be encouraging such behaviors?

CFOs in the spotlight

A significant percentage of members of finance teams can rationalize potentially unethical conduct when under pressure.

Almost half of all finance team members interviewed stated that they would be prepared to engage in at least one form of unethical behavior to meet financial targets or safeguard a company's economic survival. This reinforces the imperative for boards to adopt controls and mechanisms to confirm that the work of finance team members is challenged and subject to an appropriate level of review.



Specifically our survey found that:

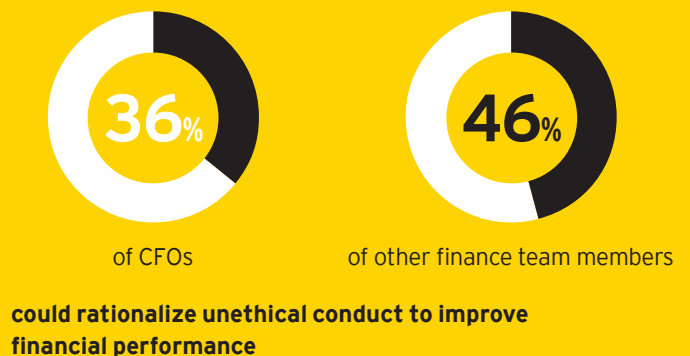
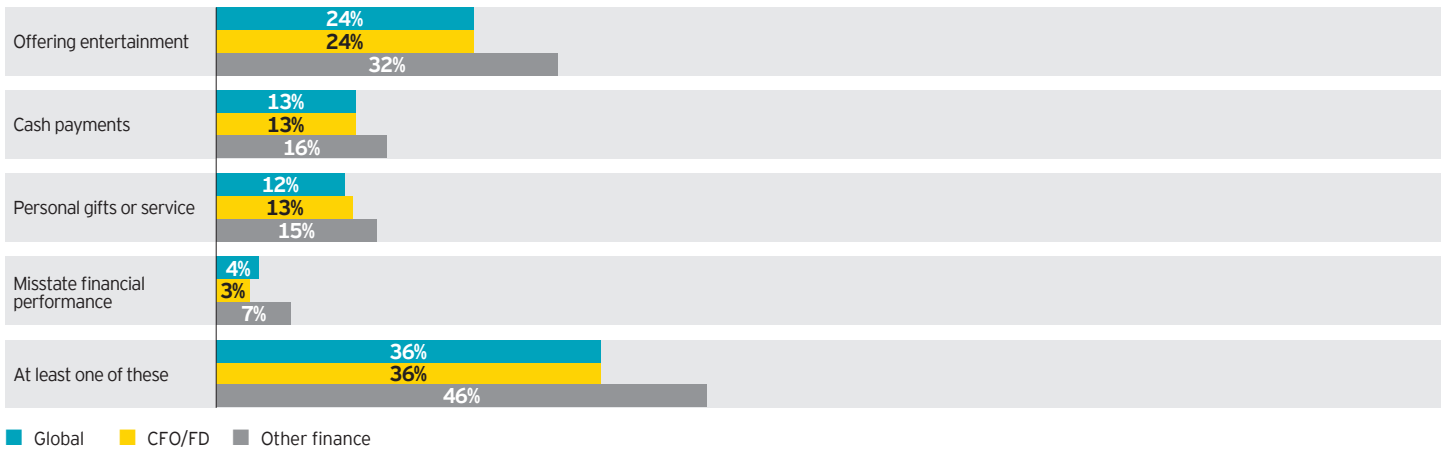




Figure 5: Spotlight on finance



Q. Which, if any, of the following do you feel can be justified if they help a business survive an economic downturn?
 Base: Global (2,825); CFO/FD (655); Other Finance (769)

Given the subjective nature of the accounting judgments often required when preparing financial reports, it is perhaps unsurprising that members of finance teams can rationalize some actions that might help their companies to meet financial targets as falling within a “grey” area. However, given the potential impact that such behaviors could have on a company, and the reliance that boards place on CFOs and finance teams to provide them with accurate financial information, these results are worrying.

Mitigating fraud risks

CFOs are influential figures in any company and have a crucial role in executing effective fraud risk management.

Under Principle 8 of the 2013 COSO Framework, companies are advised to assess an entity's fraud risks, related fraud control activities and responses to mitigate residual fraud risks. Senior management is expected to provide robust oversight of these risks and challenge lower levels of management on the effectiveness of fraud mitigation programs, ensuring that the right risks have been identified.



41%

Our survey also suggests that finance teams do not appreciate the extent of the threat posed by evolving external risks, such as cybercrime, with only 41% of CFOs viewing it as a concern.



Executive misconduct under the spotlight

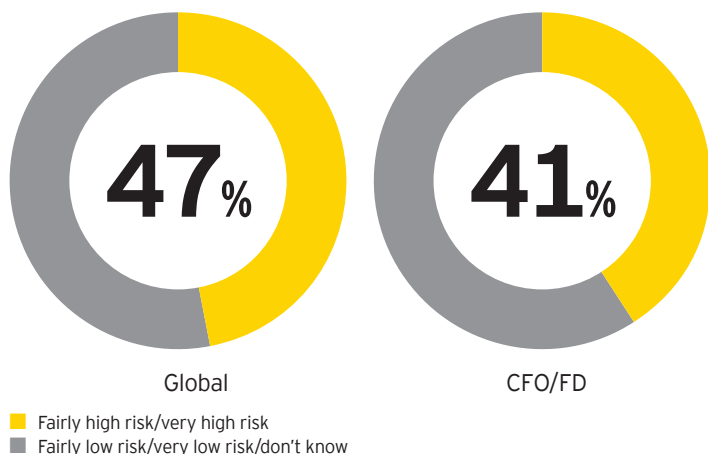
To do this effectively, CFOs and senior members of finance teams must lead by example and demonstrate their commitment to fraud prevention and detection.

Our survey also suggests that finance teams do not appreciate the extent of the threat posed by evolving external risks, such as cybercrime, with only 41% of CFOs viewing it as a concern.

Businesses must adapt to new cybercrime risks as technological developments accelerate. As businesses begin to address the risks associated with the cyber theft of information such as intellectual property or customer data, finance teams must increasingly understand the risks associated with their sensitive information.

As detailed in EY's 2015 Global Information Security Survey, "Creating Trust in a Digital World," as custodians of critical data, finance teams need to be aware of cyber business risks, be alert for threats and be ready to escalate and respond in the event of a cyber breach. Without a full appreciation of the wide range of cyber risks that could affect their business, finance teams cannot appropriately manage them.

Figure 6: Respondents from finance teams recognizing cybercrime as a risk



Q. How much of a risk would you say cybercrime poses to organizations like yours?

Base: Global (2,825); CFO/FD (655)

Board members and senior management should be aware that they and their employees are under increased personal scrutiny in matters in which, in the past, only the company might have been held accountable. A 2015 memorandum issued by the Deputy Attorney General of the United States, Sally Yates, ("the Yates Memo") detailed steps that prosecutors will take to strengthen their pursuit of individuals.

Regarded by some as a response to criticism about the lack of executives held accountable for the financial crisis, the Yates Memo prioritizes individual prosecutions. The memo states that individual prosecutions are one of the most effective ways to combat corporate misconduct.

"One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system."

Yates Memo, September 2015

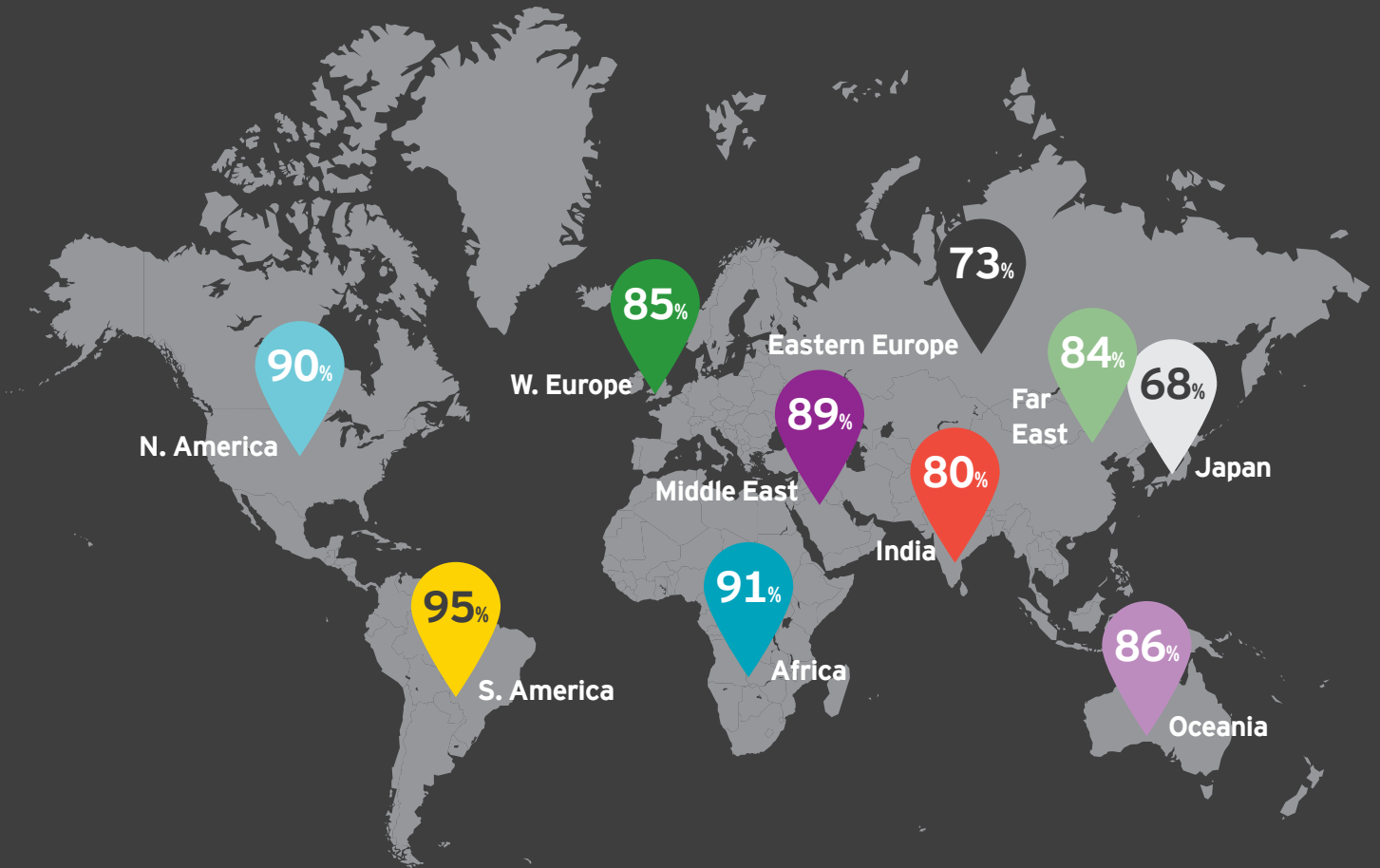
Furthermore, in April 2016, the DoJ announced the introduction of a one-year pilot program which will make companies which come forward and cooperate with it fully - including identifying culpable individuals - eligible for a 50% reduction in fines and potentially avoid being subject to a court-appointed monitor.

These policy initiatives are consistent with recent enforcement trends, with 175 individuals charged by the SEC for financial reporting violations in the past two years. In light of the increased focus on the prosecution of individuals, especially in combination with the SEC's continuing effort to incentivize whistleblowing, companies can increasingly expect their executives to have a clear incentive to cooperate with regulators.

The trend is global. In January 2015 the Serious Fraud Office (SFO) announced its first successful prosecution for an individual under the UK Bribery Act, and it continues to investigate individual executives among its active cases. Many other jurisdictions in Europe, Asia and South America are taking similar actions.

Our survey found that the majority of our respondents support this type of action, with 83% of respondents viewing enforcement against management as an effective deterrent.

Support for prosecuting individuals



83%

agree that prosecuting individual executives will help deter future fraud, bribery and corruption by executives

The spotlight on individuals places additional pressure on boards. Boards should confirm that their company's compliance and investigations functions are sufficient and independent enough to manage such eventualities and that procedures are in place when necessary to protect the functions' independence. If not, companies may receive little or no cooperation credit in any eventual settlement.

In this evolving context, board members need to recognize that they may be held accountable in the event that fraud or impropriety happens under their watch. They must therefore be alert to the potential risks their companies face and how they can demonstrate that they have responded appropriately.

Q. To what extent do you agree or disagree that prosecuting individual executives will help deter future fraud, bribery and corruption by executives?

Base: Global (2,825); W. Europe (850); Eastern Europe (650); Middle East (175); Africa (150); India (50); N. America (100); S. America (250); Far East (500); Oceania (50); Japan (50)

Key principles of the Yates Memo

1



To be eligible for any cooperation credit, corporations must provide to the DoJ all relevant facts relating to the individuals involved in misconduct

2



Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation

3



Criminal and civil attorneys handling corporate investigations should be in routine communication with one another

4



Absent extraordinary circumstances or approved DoJ policy, DoJ will not release culpable individuals from criminal or civil liability when resolving a matter with a corporation

5



Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized

6



Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay

Bolstering defenses

With a significant minority of global executives willing to justify unethical activity, and given increased enforcement efforts of regulators, boards need to continuously assess their ability to identify and mitigate fraud, bribery and corruption risk.

Such actions take particular importance as companies enter emerging markets such as Africa, Brazil, China, India and Eastern Europe, where they may be exposed to heightened risks. Companies need to continually update their risk management policies and procedures so that they are able to identify new risks and respond to new challenges.



Between 2011 and 2015, the SEC has awarded more than



us\$54m

to



22 whistleblowers

of which



us\$37m

was paid in 2015 alone

Whistleblowing

To identify and mitigate risks, companies should utilize both traditional and innovative fraud detection tools. Fraud, bribery and corruption are frequently exposed by whistleblowing. Recognizing this fact, regulators are adopting new tools to support and encourage individuals to come forward. In the U.S., for example, the Dodd Frank Act provides financial incentives for whistleblowers to provide information. The SFO, for example, actively encourages company insiders to provide it with information at the start of any investigation.

Such efforts appear to have paid off - last year the SFO received more tips from whistleblowers than from self-reports.



55%

While our survey finds that 55% of companies have a whistleblowing hotline in place, companies should not assume that such mechanisms are always effective.



In the U.S. between 2012 and 2015 whistleblowers' tips to the SEC increased by 30%, including 61 tips from countries outside of the U.S.

Despite this progress, there remain obstacles to the use of internal reporting channels. Beyond fear for personal safety, respondents highlighted their loyalty to the company as one of the main deterrents to reporting an incident of fraud, bribery or corruption.

Globally, 19% of our respondents cited loyalty to their company and 18% cited loyalty to their colleagues as impacting them in this way. These issues were more prevalent in emerging markets, with 24% of respondents citing loyalty to their company and 22% citing loyalty to their colleagues as a factor.

Boards need to recognize the role that misplaced loyalty can play in stopping people from coming forward with their concerns and hide unethical behavior. They must also lead by example and demonstrate the same behaviors that they expect of their employees and their business partners. Executives need to be aware that they can raise uncomfortable issues without being seen as disloyal; the absence of such openness can cause far more harm than good.

Global respondents



19%

of our respondents cited loyalty to their company



18%

cited loyalty to their colleagues as impacting them in this way

Emerging markets



24%

of respondents citing loyalty to their company



22%

citing loyalty to their colleagues as a factor

Data is becoming an increasingly important monitoring tool

In an environment where employees are reluctant to raise concerns, the data that a company holds can be the key to identifying instances of potential impropriety.

Regulators are using increasingly sophisticated tools to analyze data and identify trends to highlight potential fraud.

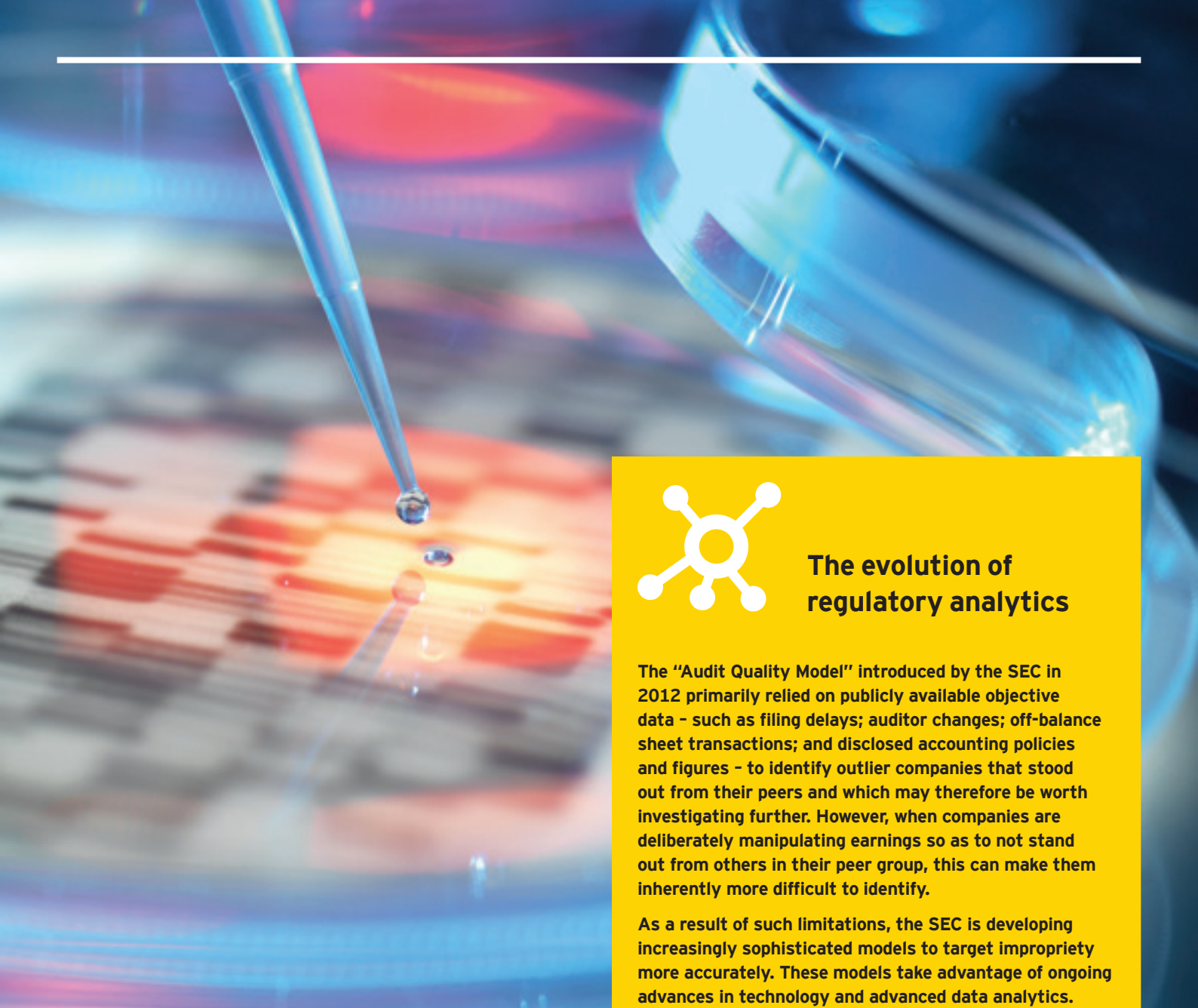
In contrast, our survey found half of respondents did not believe that their companies are utilizing specialist software to identify fraud risks. Our recent Global Forensic Data Analytics Survey, "Shifting into high gear: mitigating risks and demonstrating returns" found the reluctance to fund forensic data analytics was a key hurdle to introducing new software, with only 55% of respondents confident that their company had invested enough. It further identified a lack of awareness of the benefits of FDA for anti-fraud programs, with 68% of respondents identifying a growing need for management awareness (an increase from 62% the previous year). Do companies not yet recognize investing in such technologies as a priority?



of respondents are confident that their company has invested enough in specialized software

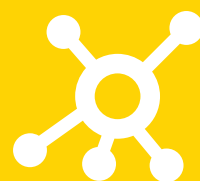


of respondents identifying a growing need for management awareness



“We have attempted in recent years to be more proactive in our enforcement efforts. One of the things we are doing is leveraging the data available to us. CIRA’s (Corporate Issuer Risk Assessment) multiple dashboards enable the staff to compare a specific company to its peers in order to detect abnormal, relative results, focus on particular financial reporting anomalies, and generate lists of companies that meet the criteria for further analysis.”

**Andrew Ceresney, Director of Enforcement,
U.S. Securities and Exchange Commission**



The evolution of regulatory analytics

The “Audit Quality Model” introduced by the SEC in 2012 primarily relied on publicly available objective data - such as filing delays; auditor changes; off-balance sheet transactions; and disclosed accounting policies and figures - to identify outlier companies that stood out from their peers and which may therefore be worth investigating further. However, when companies are deliberately manipulating earnings so as to not stand out from others in their peer group, this can make them inherently more difficult to identify.

As a result of such limitations, the SEC is developing increasingly sophisticated models to target impropriety more accurately. These models take advantage of ongoing advances in technology and advanced data analytics. In the future it is possible that the SEC’s approach could evolve into one that incorporates matters such as the language used by CEOs and management when reporting to investors, unusual absences of disclosures (i.e. it’s not what you say, it’s what you don’t say) and social media data on corporate reputation and activity.

Given the SEC’s stated intention to keep holding audit committees and their members to account, those charged with oversight of corporate behavior must be mindful of the increasing breadth of information that will now be analyzed routinely and how such data could potentially be correlated. By taking proactive steps to identify and analyze such data, boards and audit committees can be better prepared to respond in the event that possible impropriety is identified.

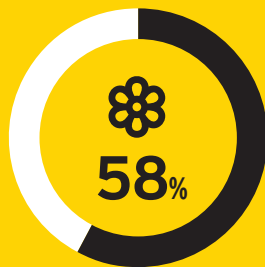
Specialist monitoring software: is financial services leading the way?



of respondents globally are utilizing specialist software



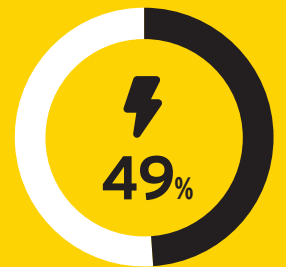
Financial services



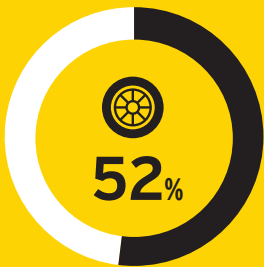
Life sciences



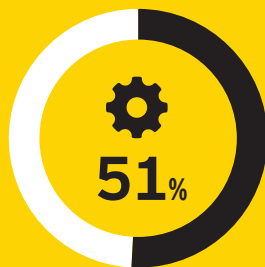
Government and public services



Oil, gas and mining



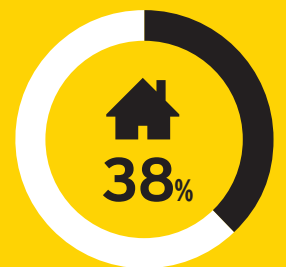
Automotive



Technology



Retail/wholesale



Real estate

Know with whom you are doing business

Despite record levels of M&A activity in recent years, our survey also finds that respondents are not yet taking potential steps to identify and mitigate key corruption risks before entering into joint ventures or local partnerships.

Businesses should be aware that entering into such partnerships can bring additional risks and that there is appetite from regulators to hold companies responsible for the conduct of any third party acting on its behalf. Regardless of whether the inappropriate conduct is by a company itself or a third party acting on its behalf, there is potential liability for the company.

Foreign Corrupt Practices Act (FCPA) enforcement activity has continued to focus on relationships with third parties, particularly the use of agents to win business in emerging markets. In 2015, the SEC and DoJ revised their guidance on the enforcement and application of the FCPA, providing greater clarity on issuers' obligations to joint ventures and minority-owned affiliates. The revised guidance made it clear that issuers should use "good faith efforts" to influence these entities to devise and maintain a system of internal accounting controls consistent with the issuer's obligations.

Despite the DoJ's focus on relationships with third parties, almost 1 in 5 respondents are not identifying third parties as part of their anti-corruption due diligence. A greater proportion, more than 1 in 3, are not assessing country or industry-specific risks before an investment.

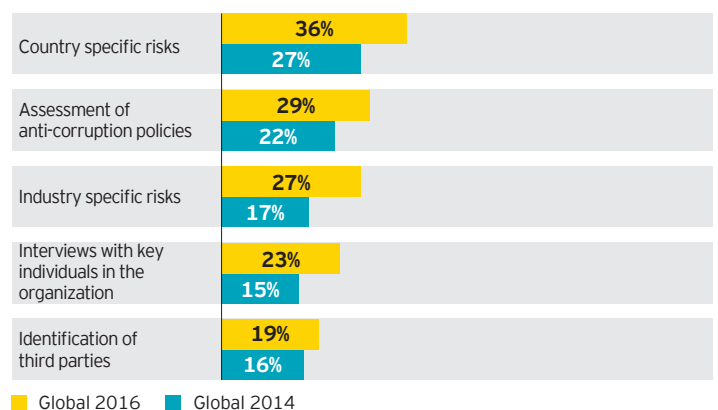
The overall proportion of respondents undertaking any common anti-corruption due diligence measures has decreased since our last survey. Could this be a product of cost constraints or are companies simply becoming complacent?



"Agents and intermediaries are of real interests to us. Our natural curiosity is piqued further if those agents or intermediaries take the form of companies based in a jurisdiction that permits beneficial ownership to be concealed."

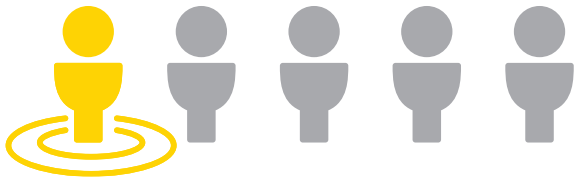
Alun Milford, General Counsel, UK Serious Fraud Office

Figure 7: Companies are doing less due diligence than before



Q. Which, if any, of the following are not included in your forensic or anti-corruption due diligence?

Base: All respondents 14th Fraud (2,825); 13th Fraud (1,067)



1 in 5

respondents are not identifying third parties as part of their anti-corruption due diligence



1 in 3

respondents are not assessing country or industry-specific risks before investment

Protecting your investment over the long term

Identifying and mitigating fraud, bribery and corruption risks at the pre-transaction stage helps businesses to make an informed decision before an acquisition or investment. This initial assessment can also assist the smooth integration of a new business into a company's structure post-acquisition.



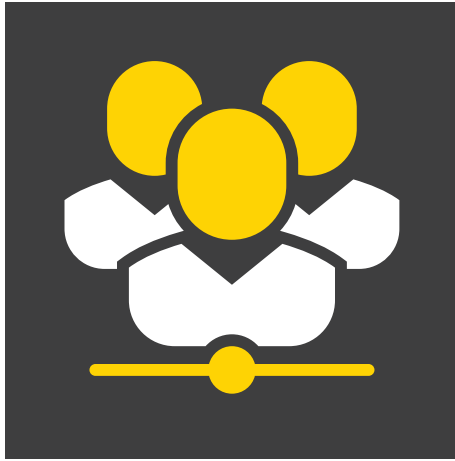
Our survey finds that companies that are able to effectively operate in challenging jurisdictions put in place additional safeguards to protect their investments.

Almost two-thirds of respondents who remained in high-risk jurisdictions undertook enhanced due diligence or more frequent internal audits. Half of our respondents utilized new technologies such as forensic data analytics or transaction monitoring to identify and mitigate such risks.

Our survey found that just over half of all companies that exited investments in Africa, Brazil, China, Eastern Europe or India cited fraud, bribery and corruption risks as a contributory factor. This is in line with our experience; companies that do not identify and mitigate risks at the early stages are more likely to be exposed to bribery and corruption challenges further down the line. In addition to the costly withdrawal from an investment, this can lead to time-consuming and reputation-damaging investigations, remediation action and regulatory fines.

Our survey has shown that local market knowledge is an imperative, and the potential ramifications of ignoring corruption and fraud risks can be significant. In the remainder of this report, we look at companies' experiences of doing business in five key emerging markets, the issues they have faced and how they have responded to them.

Cyber breach response management



A successful cyber attack can represent an existential threat to a business. Destructive attacks can significantly disrupt company operations if data is lost or equipment disabled, stolen information can be devastating.

Given the potential impacts of a cyber breach, businesses must understand their cyber risks. A well-positioned business will tailor its cyber security environment to its unique risk profile, as well as the motivations, tactics, techniques and procedures of its most likely attackers.

While strong, risk-informed cyber security is necessary, it is not sufficient by itself: businesses must be prepared to respond when a breach occurs. Issues that might first appear minor or localized could, in fact, be indicative of a significant and systemic problem.

As cyber crime is a business risk, managing a serious breach must involve all parts of the enterprise in a centralized response structure - a cyber breach response program (CBRP). Even as information technology and security personnel may be working to contain, investigate, and remediate a breach, business leadership

must remain involved to direct interaction with employees and legal counsel, as well as, if necessary, regulators and law enforcement. The CBRP brings these stakeholders under a single umbrella that coordinates and oversees the totality of the breach response issues. In short, it provides guidance to all lines of business involved in the response, sets a level of understanding about what information is critical for senior leaders to know - as well as when and how to express it, and allows continuous reaction with precision and speed as a breach continues to unfold over days, weeks or even months.

Finally, a CBRP can only be effective if all stakeholders are aware of their roles and responsibilities in the event of a breach. A real breach cannot be the first time a business assesses whether its response procedures are adequate. All key plans should be tested periodically to allow for an effective and coordinated response.

Regional insights

What leading businesses
are experiencing and doing



Continuously revisit the challenges that they face to identify the evolving risks of fraud, corruption and cybercrime



Recognize the risks specific to each market, e.g., local-content rules and strength of enforcement



Consider fraud, bribery and corruption to represent a business risk for which effective mitigation required the input of the wider operational business

During February and March 2016, members of our Fraud Investigation & Dispute Services practice held discussions with general counsel, chief compliance officers, heads of internal audit and senior finance executives from leading companies about the survey's findings, their own experiences of fraud and corruption across their markets and how they were addressing the risks they faced.

Our leading practice interviews were conducted with executives at the headquarters level. They focused on issues in Africa, Brazil, China, Eastern Europe and India: markets where businesses continue to look for growth and that are perceived to present higher fraud, bribery and corruption risks.

Our global survey shows that 39% of respondents perceive that bribery and corruption are widespread in their countries, and our leading practice interviewees' views regarding the prevalence of corruption were broadly consistent with those of the respondents to our survey. They highlighted, for example, some positive trends occurring more recently in Brazil. Some interviewees challenged the level of risk recognized by the survey respondents in Russia and China, considering it potentially higher.

Interviewees also noted significant legislative developments around the world. They observed, however, an apparent lack of enforcement in many countries.

In the following sections, we have highlighted a number of key issues that were seen as being particularly challenging or significant and actions that companies can take to mitigate the risks.

We would like to thank the following executives for participating in these frank and illuminating discussions:

Advance Publications - Steve Markovits	Halliburton - Jeffery Spalding	Novartis - Alisa Harbin
AstraZeneca - Katarina Ageborg and Johan Widestrand	The Hershey Company - Adrian Mebane and Sarah Foley	Orange - Pierre-Antoine Badoz
Baker Hughes - Jay Martin	The Interpublic Group of Companies - Julie Connors	Pernod Ricard - Ian Fitzsimons
Bayer - Dr. Rainer Schwarz	Ipsen - Dominique Laymand	SAP - Hanno Hinzmann
Beam Suntory - Kenton Rose	Johnson & Johnson - John Crisan	StatOil - Carine Smith-Ihenacho
Bouygues - Jean-François Guillemin	Kinross Gold Corporation - John Vanderbeek	Telecom Italia - Antonino Cusimano
Continental - Dr. Cordula Fitzpatrick	Marathon Oil Company - Richard Kolencik and Steven Gyszly	Total - Sophie Musso
Del Monte Foods - William Reed Sawyers	Marriott International - Edward Ryan	Tyco International - Matthew Heiman
Deutsche Telekom - Manuela Mackert and Sebastian Scheidt	Merck KGaA - Dr. Friederike Rotsch and Markus Bamberger	Visa - John Black
Fiat Chrysler Automobiles - Alessandro Baldi	Nestlé - Enrique Rueda and Marian Marinov	W.R. Grace - Mark Shelnitz

Africa

Charles de Chermont, Johannesburg

While the recent global fall in commodity prices has created economic shocks in many countries across Africa and resulted in a slowdown in overall activity, longer-term indicators still offer cause for some encouragement.

From a political perspective, the completion of peaceful elections in Nigeria, Ivory Coast and Tanzania during 2015 was significant. From an economic perspective, recent studies continue to report Africa's growing share of global capital investment and job creation.

One striking theme that has emerged in recent elections across the continent is the focus of the electorate on public sector corruption, with voters putting politicians under pressure to do more to stop the misuse of public funds.

However, progress across the continent remains patchy, with South Africa and Kenya facing continued scrutiny over corruption and poor economic growth. In South Africa, the OECD reported that no foreign bribery cases have been prosecuted since South Africa joined the Anti-Bribery Convention in 2007 and capital markets responded negatively to the appointment of two replacement finance ministers in the same week in December 2015. In Kenya, a journalist was arrested in November 2015, days after writing an article questioning government spending. The Minister for Planning and Devolution, Anne Waiguru, resigned later that month. More recent attention has focused on allegations of corruption at the Kenya Athletics Federation.

Consistent with these high-profile events, public perception of government action on corruption is mixed, with one-third of respondents in Nigeria describing the government as effective in prosecuting cases of bribery and corruption, compared with only one in ten in Kenya and South Africa. One-quarter of respondents in Kenya and 42% in South Africa thought that the government was not willing to prosecute.



Understanding your business partners

Investment in Africa has seen significant recent growth, reaching US\$128b in 2014, up 136% on the prior year. However, while investment decisions vary based on location and individual circumstances, we consistently find that corruption risk is named by investors as one of the most significant barriers to investing in Africa. As investors consider opportunities in Africa, it is essential that they assess corruption risk by performing proper anti-corruption due diligence on potential partners and intermediaries.

In this context, companies should consider not only acquisition targets and direct business partners but also their third-party relationships, including agents, distributors and recipients of charitable support. In an environment where operations are less established, it is more likely that interactions taking place on behalf of the business will be managed by third parties.

Leading companies we interviewed highlighted what they saw as the increasing risk posed by local content rules in certain jurisdictions. Such rules progressed from being requirements to use local personnel and make purchases from local businesses, to being required to enter into joint ventures with local companies. Identifying the good from the bad is not straightforward. Virtually all respondents to our survey reported that their companies have policies, procedures and controls in place (for example, 95% of respondents in Africa said they had an anti-bribery and anti-corruption code of conduct and were subject to regular internal audits). However, with one in five Kenyan respondents to our survey saying that they would be willing to make cash payments to win business and 24% of Nigerians saying that they would be willing to offer personal gifts, simply having policies and procedures is clearly not enough to win hearts and minds.

Companies should:

- ▶ Confirm they understand the ownership, conduct and track record of third parties
- ▶ Enforce audit rights
- ▶ Treat due diligence as an on-going process
- ▶ Confirm that compliance is adequately resourced

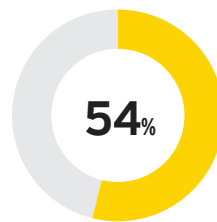


“Yet we also note that most nations that have achieved rapid economic growth in recent decades have one thing in common: they first addressed their breakdown in governance, cracked down on corruption and demonstrated to their own people and the world that to invest in that country is safe. That is where we also must begin.”

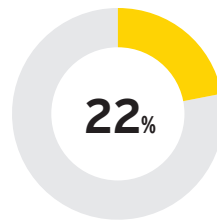
Muhammadu Buhari, President, Federal Republic of Nigeria

Whistleblowing

The early identification of issues is critical to a company’s ability to manage risk. All evidence suggests that the people best placed to know about the issues facing a business are the employees within the business. So when almost one in four Kenyan respondents and more than 15% of Nigerian respondents said they would be prepared to ignore unethical conduct if it would help their own career progression or remuneration package, this is a serious cause for concern. Equally worrying is that almost one in ten respondents in Nigeria and Kenya said that they felt under pressure not to report concerns they had about business conduct. Similarly, almost half of respondents in Kenya and Nigeria said they would fear for their personal safety if they reported concerns internally.



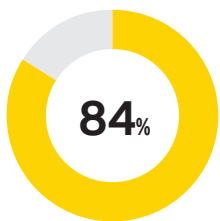
54%
of respondents in Nigeria stated that loyalty to their company would prevent them from reporting an incident of fraud, bribery or corruption



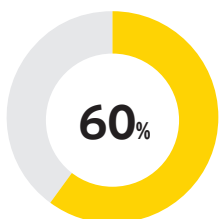
22%
of respondents in Kenya would misstate their company's financial performance in an economic downturn

Companies should:

- ▶ Have detailed policies and procedures for whistleblowing
- ▶ Confirm confidentiality for whistleblowers
- ▶ Encourage the use of reporting mechanisms



84%
of respondents in Kenya believe that bribery and corruption are widespread in their country



60%
of respondents in South Africa have had concerns about ethical conduct at work

Monitoring and detection

With many African economies experiencing an increasingly challenging environment, the fact that one in ten in South Africa and one in five in Kenya were willing to misstate their company’s performance should be a serious cause for concern.

In Africa, companies should understand the incredible diversity of the data landscape, with huge variation in the quality and nature of data held by both the business and other parties. In Africa, technology (in areas such as mobile banking) exists next to large quantities of handwritten records and electronic data maintained across multiple systems. This data variety has implications for companies considering how best to monitor transactions.

Companies should:

- ▶ Apply targeted forensic data analytics as part of proactive monitoring having regard for potential gaps in, and the nature of, data



Brazil

Jose Compagno, Sao Paulo

Over the last year, Brazil has faced significant economic and political challenges, including severe recession.

Moreover the economy has been impacted by the ongoing operation “*Lava Jato*” investigation into allegations of corruption and money laundering at the state controlled oil company, Petrobras.

Brazil is under increasing public pressure to address the country's high levels of bribery and corruption. In this context, the level of investigation, prosecution and enforcement has increased significantly over the past year.

Although increased regulation with respect to bribery and corruption is a recent development in Brazil, there has already been a significant increase in enforcement focused on both local and international companies which has led to the arrests of high-level executives and politicians who had previously been considered untouchable. In the context of the *Lava Jato* alone, there have been a total of 133 arrest warrants successfully granted as of spring 2016 and a total of 84 convictions.

Brazilian authorities have conducted investigations in parallel to those in the U.S. and worked closely with authorities in a number of countries to successfully repatriate ill-gotten funds. In this context, there is an urgent need for companies to understand the new compliance landscape, identifying where risks lie and mitigating these as effectively as possible.



Brazilian authorities have conducted investigations in parallel to those in the U.S. and worked closely with authorities in a number of countries to successfully repatriate ill-gotten funds.

Local legislation and the need for independent risk assessments

Brazil has continued a growing trend in the region focused on setting tougher compliance standards, most notably with the passage of the Clean Company Act in 2014. This was subsequently reinforced by a 2015 decree that established clear guidelines for companies seeking to comply with the Act. Among other things, this decree established standards for anti-corruption compliance programs and how to mitigate potential violations.

For the first time, this legislation holds companies operating in Brazil liable in civil courts for the criminal acts of their executives, employees and agents, making it a key consideration for any business in Brazil.

Companies should:

- ▶ Conduct an independent risk assessment taking into account documents, interviews and financial information and considering the use of transaction monitoring software



Know your business partners

Given the size of Brazil and geographic variations between regions and states, a number of sectors typically rely on third parties across the country to assist with the distribution and sale of products or the execution of projects. Although this can pose a daunting task for companies, failure to effectively and regularly apply due diligence procedures can create significant liability.

Companies should:

- ▶ Conduct more in-depth, risk-based analysis in their due diligence



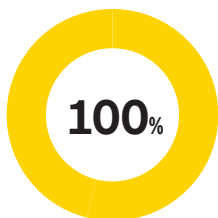
Technology monitoring

With the increased focus on companies to have effective compliance structures in place, regulatory authorities are also placing emphasis on the need for these structures to allow for companies to respond quickly to any claims of internal fraud or corruption. Under the new legislation, a lack of knowledge of intention to benefit from fraud does not serve as a limitation to liability.

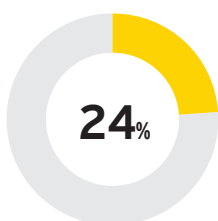
The introduction of the Clean Company Act has reinforced the need for whistleblower hotlines as a critical requirement for a robust compliance program. Although 86% of our Brazilian respondents confirmed they have a whistleblower hotline, only 32% felt that it has become easier in the past three years for employees to report their concerns. If channels are not supported by clear guidance or support from top level management, employees may be deterred from reporting.

Companies should:

- ▶ Evaluate the accessibility of the whistleblowing channels
- ▶ Confirm that their investigation capabilities are adequately resourced to respond
- ▶ Utilize technology to monitor potential indicators of fraud
- ▶ Confirm their commitment to compliance throughout the organization and reinforce this commitment



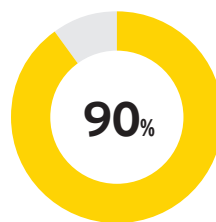
100%
of respondents in Brazil believe that prosecuting individual executives will help deter future fraud, bribery and corruption by executives



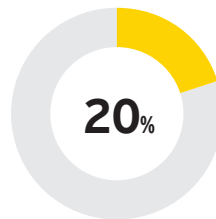
24%
of respondents have had concerns about misconduct at work

“Confronting systematic corruption will bring significant gains for all of us, for companies and for the economy in general. The cost of systematic corruption is extraordinary.”

Sergio Moro, Federal Judge, Brazil



90%
of respondents believe that bribery and corruption is widespread in their country



20%
of respondents stated that fear for personal safety would prevent them from reporting an incident of fraud, bribery and corruption

Looking ahead

Although 38% of respondents think efforts by governments and enforcement authorities to combat fraud, bribery and corruption have increased, 70% felt that although there was a willingness to prosecute, authorities are not effective in securing convictions.

However, Brazilian survey respondents were unanimous in thinking that prosecution of individual executives will help deter fraud, bribery and corruption. In the context of the new compliance landscape in Brazil, and recent high-profile enforcement action, this suggests that the country is moving in the right direction. Recent developments have demonstrated an increasing appetite at the board and C-suite levels to address fraud and corruption.

In addition, leading companies informed us that they measure their employees' performance against values and behavior, as opposed to purely financial performance - the intention being that the “motivation to cheat decreases and doing the right thing increases.”

China

Emmanuel Vignal, Shanghai

In the past four years, the compliance landscape in mainland China has become more complex, with China's own assertive enforcement activities being augmented by the U.S. DoJ's cross-border focus on foreign multinationals.

Foreign and Chinese domestic corporations alike have become keenly aware of President Xi Jinping's proactive anti-graft campaign against "Tigers and Flies," which targets all participants in the corruption food chain. The Chinese Government's commitment to tackle corruption has already resulted in several high profile prosecutions, including senior public officials, and there is no indication that the campaign is losing momentum. Our survey found that 74% of respondents in China believe that enforcement is effective, showing that this campaign is achieving the desired credibility in the business community.

Mainland China's anti-bribery and anti-corruption regulatory framework continues to be refined to strengthen the country's enforcement tools and eliminate potential loopholes. These changes include the Ninth Amendment to China's Criminal Law that took effect in November 2015, which introduced monetary fines for bribe givers and replaced previous monetary thresholds in the sentencing standards with a subjective assessment of the case severity. Most recently, in February 2016, a draft amendment to China's core anti-corruption law, the Anti-Unfair Competition Law, heralding the law's first update since its enactment in 1993, looks to introduce a books and records requirement and makes clear that companies would be held responsible for the business practices of their employees and third parties.

A broad range of sectors will be affected by these changes, but those involving direct interactions with officials and with Chinese consumers, such as life sciences and automotive companies, will be under particular scrutiny.

At the same time, expanding Chinese multinational companies, looking to 'go abroad,' are dealing with the challenge in reverse as they venture from the domestic Chinese market to foreign markets with different anti-corruption regimes. The first DPA under the UK Bribery Act in late 2015, which related to conduct in Tanzania by a former affiliate of a Chinese company, underscores this dynamic.

With China's economy experiencing decelerating growth rates, another layer of complexity has been added to companies already dealing with the evolving enforcement climate. The pressure to cut corners to win business is stronger than ever in this environment, even with the risk of heightened local enforcement.

Responding to the challenge

In this complex environment, it is more important than ever to approach the challenge of monitoring for fraud and corruption risks in an intelligent and cost-effective way.

Companies should:

- Conduct due diligence on ownership, operating history and reputation of third parties
- Apply anti-fraud and corruption training
- Monitor employee and third-party expenses
- Conduct fraud and corruption risk assessments



74%

of respondents in China believe that enforcement is effective, showing that the anti-corruption campaign is achieving the desired credibility in the business community

Dealing with the slowdown

Global instability and slower growth in China mean companies need to proceed more carefully in their operations and acquisitions, or risk reputational loss, low morale, regulatory penalties, or short-seller attacks.

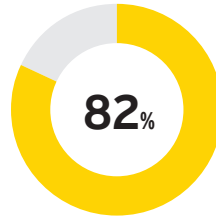
Under growth pressure, companies are looking beyond organic growth and searching for opportunities via acquisitions, with China leading the way in M&A activity across Asia Pacific in 2015. In this context it is imperative that companies conduct robust pre-acquisition due diligence to confirm the integrity of the target's management and books and records.

Internally, companies must also recognize that soft markets encourage fraud and corruption risk-taking. Taken in tandem with the reality of increased anti-corruption enforcement, fraud schemes are becoming more and more sophisticated in efforts to avoid detection. Chinese enforcement agencies have not shown leniency towards companies for well-intentioned compliance programs if violations have nevertheless occurred, so active monitoring is more important than ever.

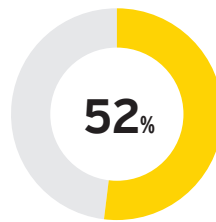
Not only do companies have to consider known schemes for financial misstatement and/or misdirection of funds, management and boards have to consider new methods such as indirect collusion with third parties to launder corrupt payments or inflate sales.

Companies should:

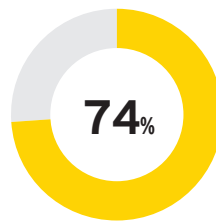
- ▶ Apply forensic data analytics to monitor transactions
- ▶ Layer this alongside traditional forensic due diligence



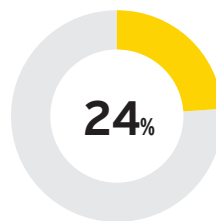
82%
of respondents in China believe that prosecuting individual executives will help deter future fraud, bribery and corruption by executives



52%
of respondents in China believe that cash payments can be justified to win or retain business in an economic downturn



74%
of respondents in China believe that law enforcement agencies are effective in securing convictions



24%
of respondents in China believe that bribery and corruption happen widely in their country

Conclusion - bright future ahead

Overall, China has shown strong and sustained initiative on the global stage with regards to combating corruption, with further encouraging signs from President Xi's trip to the U.S. in September 2015, emphasizing the need to work more closely on anti-corruption measures and to strengthen inter-governmental cooperation. The sea change in attitudes is felt throughout; foreign multinationals and local Chinese companies alike are starting to realize that conducting business ethically is not only a legal requirement but also a commercial advantage.

Chinese companies that look for overseas expansion and have strong compliance mindsets are also better positioned to succeed in highly regulated markets, while reducing the risk of financial loss in less transparent and unfamiliar markets.

"Transparency is the best precaution against corruption. As we go further in the anti-corruption campaign, we will focus more on institutional building so that officials will not dare and cannot afford to be corrupt and, more importantly, have no desire to take that course."

Xi Jinping, President, The People's Republic of China

Eastern Europe

Mariusz Witalis, Warsaw
Daniel Bican, Prague

Dilek Çilingir, Istanbul
Dima Zhigulin, Moscow

Eastern Europe continues to be a challenging environment in which to operate for many multinational corporations, and one in which trust in the legislative environment is by no means universal.

Allegations that enforcement actions could be politically motivated damages confidence in their fairness. At the same time, the effectiveness of regulators is being questioned. Over half of the respondents to our survey from this region believed that, although regulators appeared willing to prosecute cases of corruption, they did not consider them effective in securing convictions – the highest of the regions we interviewed.

The robustness with which countries in Eastern Europe are responding to corruption varies widely, with Poland and Romania standing out for the strength of their enforcement. Poland has increased the power of its police and enforcement agencies and enhanced their surveillance capabilities. Over this same period, Romania's national anti-corruption directorate has been highly active in prosecuting corruption, and has secured the convictions of high-ranking politicians and business people.

Russia has continued to develop and extend the scope of its anti-corruption legislation with an increased number of government officials now required to disclose their personal income and potential conflicts of interest. Russia has also maintained a focus on fighting corruption both at a regional level, with several governors and officials under criminal investigation, and also at a multinational level, repatriating several well-known businessmen whose fortunes are alleged to have been accumulated through fraudulent schemes.

While generally lagging behind more developed markets, some of the countries in the region have now started to apply whistleblower protection legislation. Whether such legislation will be enough to give individuals the confidence to speak up is yet to be seen. There remains personal security concerns in the region, with more than half of those interviewed in Slovakia citing personal safety as a reason they would not report an incident of fraud. In addition, cultural factors such as loyalty to colleagues and companies may also restrict its effectiveness; 20% of the Eastern European respondents to our survey cited such loyalties as reasons why they would not report an incident of fraud or corruption.

Managing corruption risks

Corruption is widely perceived to be a deep-rooted problem in the region. As a consequence, it is vital that businesses establish the right tone at the top and practice values-based compliance. A representative of one of the leading companies we interviewed observed that in their experience most people want to do the right thing; the key is in making them proud to act ethically.

20%

Cultural factors such as loyalty to colleagues and companies may also deter whistleblowers; 20% of the Eastern European respondents to our survey cited such loyalties as reasons why they would not report an incident of fraud or corruption

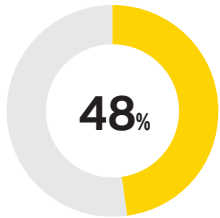


Corruption is widely considered to be a deep-rooted problem in the region

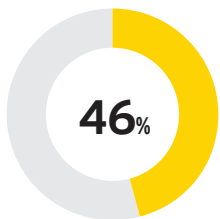
Companies should:

- ▶ Execute strong compliance programs, including on-going risk assessments and training (in operational parts of the business, not just compliance)
- ▶ Utilize forensic data analytics
- ▶ Conduct robust anti-corruption due diligence on third parties





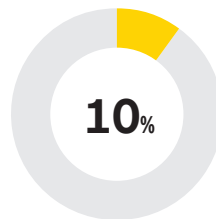
48%
of respondents in Slovakia would make cash payments to win or retain business



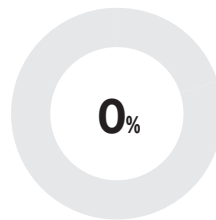
46%
of respondents in Hungary had concerns about ethical conduct at work

“The fight against bribery is crucial to help our countries overcome the world’s mediocre economic outlook. It is also key to improve public services and address our social challenges.”

José Angel Gurría, Secretary-General, OECD



10%
of respondents in Russia identify third parties as part of their anti-corruption due diligence



0%
of our respondents in the Ukraine believe that the authorities are willing to prosecute and effective in securing convictions

Mergers and acquisitions

As with any region perceived to have a high corruption risk, anti-corruption due diligence should be undertaken on the target before entering any business transaction. It was surprising, therefore, that significant proportions of respondents in Eastern Europe reported that their companies did not undertake key elements of effective anti-corruption due diligence before entering into transactions.

Only 36% reported that their companies considered country-specific corruption risks. More than half of respondents reported that their companies sought to identify a target’s third-party relationships as part of their due diligence. Only 10% of respondents from Russia stated their companies undertook either of these procedures. This provides context for the many cases of corruption, financial statement and tax fraud that are discovered during the post-acquisition stage in this region.

Cyber attacks on Western corporates

Low levels of enforcement and inadequate preventative controls have resulted in an escalation in numbers of organized crime groups turning to cybercrime.

A variety of industries have been targets of cyber attacks in Eastern Europe, including multinational companies in financial services, life sciences and public institutions, among others. Governments and corporations have attempted to respond to these threats but their efforts to date have been neither sufficiently robust nor coordinated to make a significant impact. Despite this environment, only 40% of our respondents from this region indicated that they consider cyber risk as part of their due diligence considerations - a figure which fell to a surprising 4% in Russia.

Companies should:

- ▶ Tailor their due diligence for the market risk
- ▶ Focus attention on ownership of third-party business partners



Companies should:

- ▶ Undertake a cyber risk assessment for themselves and their third party business partners



India

Arpinder Singh, Mumbai

With its two-trillion dollar economy and a population in excess of one billion people, India continues to attract inbound investment.

Government-led initiatives, including tax reforms, regulatory improvements and the 'Make in India' initiative, have made India a global leader for Foreign Direct Investment (FDI) between October 2014 and April 2015, with a 48% upsurge in FDI.

The regulatory landscape is evolving quickly in India. The 'Make in India' initiative includes a plan for the simplification of regulatory requirements to increase transparency over obtaining licences and approvals. In 2016, as part of its commitment against corruption, the Indian Supreme Court expanded the definition of a public servant to include private bankers. This move, while clearly impacting the financial sector, is expected to have a broader impact on other highly-regulated sectors. Additional legislation focusing on corruption and whistleblower protection is currently going through amendments in the Indian parliament. In addition, a series of bilateral agreements, targeted at uncovering hidden wealth, is underway. At the same time, there has been a notable increase in enforcement activity by Indian authorities.

Such proactive steps could be the reason for India's improved ranking in Transparency International's Corruption Perceptions Index, in which the country stood at 76th place in 2015, up from 85th place in 2014. Our survey findings provide a similarly positive message, with 58% of respondents believing that bribery and corruption happens widely in India, compared to 67% in 2014.

However, it is important to recognize the challenges that businesses operating in India still face. Despite the initiatives and the progress, respondents who exited or considered exiting India still frequently cited fraud, bribery and corruption, as well as inconsistent or arbitrary enforcement of laws and regulations, as key reasons for their exit.

Our survey found that 80% of our respondents in India believe that prosecution of individuals would help deter future fraud, bribery and corruption by executives.

Compliance framework

Corruption continues to be a significant risk for companies working with government bodies. Companies engaging with state-owned businesses and government departments need to have strong compliance programs in place to mitigate these risks. Although 76% of companies have anti-bribery and anti-corruption policies in place, they must realize that "paper-based compliance" will not suffice.

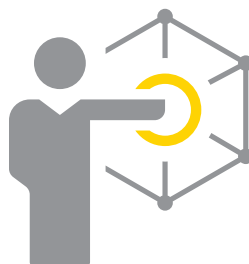
Leading companies in India not only have strong policies but are embedding ethical behavior into their daily business practices, with teams empowered to do the right thing by a strong tone from the top. From an operational perspective, companies can find it a challenge to define key performance indicators for their compliance functions and to demonstrate the value that they deliver to the business.

Leading companies highlighted to us the imperative of the compliance function capturing and reporting data on sanctioned conduct within the company to the board.

In addition, the risk of cybercrime is also rising in India. Our survey found that 42% of the respondents in the region believed that cybercrime has been discussed by the board in the past year.

Companies should:

- ▶ Conduct thorough due diligence on third parties
- ▶ Recognize the impact of culture on business risk
- ▶ Introduce training about cyber threat to employees



42%

of the respondents in the region believed that cybercrime has been discussed by the board in the past year

“While transparency reduces corruption, good governance goes beyond transparency in achieving openness. Openness means involving the stakeholder in the decision-making process. Transparency is the right to information while openness is the right to participation.”

Narendra Modi, Prime Minister, India

Focus on anti-money laundering controls

Indian banks are still under scrutiny for money laundering issues, in particular in relation to international trade and remittances. This re-emphasizes the continual existence of black money and the existence of a parallel economy.

The Government and financial regulators are taking measures to combat black money, such as the 2015 amendment to the Benami Transaction (Prohibition) Bill. Despite this, there remains much to be accomplished.

Financial misstatement and whistleblowing

Our survey found that a significant minority of respondents in India would be willing to manipulate financial information to improve financial performance, while 30% of respondents are prepared to book revenues earlier than they should be recognized, the highest proportion globally.

Almost a third of our respondents in India cited loyalty to their company or to colleagues as a reason to not report any incidents of fraud, bribery or corruption.

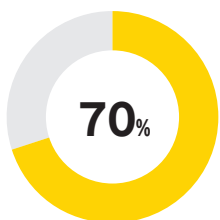
Companies should:

- ▶ Upgrade their anti-fraud technologies to support monitoring of suspicious transactions

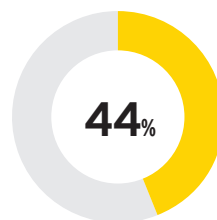


Companies should:

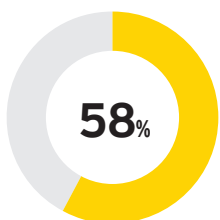
- ▶ Use forensic data analytics to identify irregularities
- ▶ Assess the effectiveness of whistleblowing hotlines and awareness amongst employees



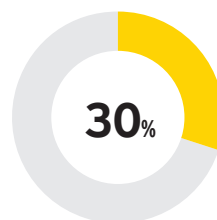
70% of respondents believe that at least one form of unethical conduct can be justified to meet financial targets



44% of respondents had concerns regarding unethical conduct at work



58% of respondents believe that bribery and corruption was widespread in their country



30% of respondents stated that loyalty to their company would prevent them from reporting an incident of fraud, bribery or corruption



Conclusion

The global enforcement landscape is changing. With increased cooperation across borders, information sharing, and insights drawn from analysis of data no longer constrained by man hours, regulators are better armed and informed about corporate misconduct than ever before.

However, our results show that individuals - including some senior executives entrusted with the guardianship of their firms - cannot be assumed to act with integrity if the end might seem to justify the means.

There will always be global hotspots for corruption and impropriety which increase the fraud and corruption risks that a company might face.

The regulatory focus on the conduct of individuals requires boards to act collectively for the good of their firms. We have set out elements of leading practice and the actions that boards should take throughout this survey. However our experience tells us that there are three broad categories of question on which boards must maintain a focus:

- ▶ **The risks their businesses are exposed to emanating from their global operations.** Are boards confident that those leading on the ground in high-risk markets understand the business culture and how work is won? Are boards confident that management has enough awareness of the key third-parties with which their companies partner and who is really behind them? Is the business focusing the right resources on the right risks in the right locations or is it failing to keep up with the evolving environment?
- ▶ **The 'big picture' indicators that could indicate impropriety.** With regulators looking harder at the data companies report, are boards comfortable that management's accounting is reasonable and balanced and that their profits and balance sheets reflect reality? Where there is evidence of systematic minor breaches of financial controls, could this be indicative of a wider tendency towards non-compliance?
- ▶ **The drivers of individual behavior in their businesses.** Does the way in which individuals are rewarded incentivize impropriety? What could encourage individuals to act properly in the interests of the business? Which areas of the business are likely to feel under the greatest pressure to perform? How do staff know what is expected of them?

Companies can expect to be exposed to new risks in the years ahead. The implications for business from these key trends are likely to require more focus from management and boards alike:

- ▶ Data privacy and its impact on national security, counter-terrorism and anti-fraud/anti-corruption efforts
- ▶ The transition of terrorist financing from the black to the mainstream economy
- ▶ Increasingly organized and sophisticated cyber attacks targeting corporate and customer data
- ▶ Iran and its place in the international system - compliant nation-state or continued target for sanctions?
- ▶ Commodity price volatility and its potential to increase the risk of rogue trading and financial statement fraud
- ▶ The need to strengthen beneficial ownership transparency, especially in the non-financial sector, and to identify illicit transactions tied to the proceeds of corruption

Survey approach

Between October 2015 and January 2016, our researchers - the global market research agency Ipsos MORI - conducted 2,825 interviews in the local language with senior decision-makers in a sample of the largest companies in 62 countries and territories. The polling sample was designed to elicit the views of executives with responsibility for tackling fraud, mainly CFOs, CCOs, general counsel and heads of internal audit.

Participant profile - region and territory

Number of interviews		Number of interviews	
Far East Asia		Middle East, India and Africa	
China (mainland)	50	Egypt	25
Hong Kong SAR	50	India	50
Indonesia	50	Israel	25
South Korea	50	Kenya	50
Malaysia	50	Middle East**	75
Philippines	50	Nigeria	50
Singapore	50	Saudi Arabia	50
Taiwan	50	South Africa	50
Thailand	50	North America	
Vietnam	50	Canada	50
Japan	50	U.S.	50
Eastern Europe		Oceania	
Baltic States*	75	Australia	40
Bulgaria	50	New Zealand	10
Croatia	50	Western Europe	
Czech Republic	50	Austria	50
Hungary	50	Belgium	50
Poland	50	Denmark	50
Romania	50	Finland	50
Russia	50	France	50
Serbia	50	Germany	50
Slovakia	50	Greece	50
Slovenia	50	Ireland	50
Turkey	50	Italy	50
Ukraine	25	Luxembourg	50
South America		Netherlands	50
Argentina	50	Norway	50
Brazil	50	Portugal	50
Chile	50	Spain	50
Colombia	50	Sweden	50
Mexico	50	Switzerland	50
		UK	50

* Estonia, Latvia, Lithuania

** Jordan, Oman and the UAE

For the purposes of this report, “developed” countries include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, UK, U.S., “Emerging” countries and territories include Argentina, Brazil, Bulgaria, Chile, China (mainland), Colombia, Croatia, Czech Republic, Egypt, Estonia, Hong Kong SAR, Hungary, India, Indonesia, Israel, Jordan, Kenya, Latvia, Lithuania, Malaysia, Mexico, Nigeria, Oman, Philippines, Poland, Romania, Russia, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa, South Korea, Taiwan, Thailand, Turkey, UAE, Ukraine, Vietnam.

Participant profile - job title, sector and revenue

Number of interviews		
Job title		
CFO/FD	655	23%
Other finance	769	27%
Head of Internal Audit	237	8%
Other Internal Audit/risk	353	12%
Head of Compliance	81	3%
Head of Legal	137	5%
Company Secretary	22	1%
Other stakeholder	571	20%
Sector		
Automotive	130	5%
Consumer products/retail/wholesale	719	25%
Financial Services	258	9%
Government and public sector	58	2%
Life sciences	117	4%
Manufacturing/chemicals	363	13%
Oil, gas and mining	198	7%
Other transportation	151	5%
Power and utilities	142	5%
Professional firms and services	177	6%
Real estate	224	8%
Technology, communications and entertainment	211	7%
Other sectors	77	3%
Revenue*		
More than US\$5b	168	6%
US\$1b–US\$5b	542	19%
US\$500m–US\$0.99b	372	13%
US\$100m–US\$499m	890	31%
US\$99m or less	813	29%
Above US\$1b	710	25%
Below US\$1b	2075	73%

*40 respondents either refused to provide or did not know the annual turnover of their company

Detailed results

Bribery/corrupt practices happen widely in business in this country

39%

of respondents agree that bribery/corrupt practices happen widely in business in their country



Rank	Country	% Agree
1	Brazil	90
2	Ukraine	88
3	Thailand	86
4	Nigeria	86
5	Kenya	84
6	Mexico	82
7	Colombia	80
8	Indonesia	78
9	South Africa	74
10	Egypt	72
11	Slovakia	70
12	Philippines	68
13	Hungary	66
14	Argentina	66
15	Greece	62
16	Croatia	60
17	India	58
18	Italy	56
19	Chile	54
20	Czech Republic	54
21	Portugal	50
22	Spain	50
23	Serbia	48
24	Vietnam	42
25	Malaysia	40
26	Slovenia	40
All respondents		39

Rank	Country	% Agree
27	Romania	36
28	Turkey	36
29	Middle East	35
30	Poland	34
31	Russia	34
32	U.S.	34
33	Bulgaria	32
34	Hong Kong SAR	30
35	Canada	30
36	Baltic states	29
37	United Kingdom	28
38	Australia	28
39	China (mainland)	24
40	Israel	20
41	Japan	18
42	France	18
43	Norway	16
44	South Korea	14
45	Taiwan	10
46	Austria	10
47	Luxembourg	10
48	Ireland	8
49	Singapore	8
50	Belgium	8
51	Switzerland	8
52	Germany	6
53	Netherlands	6
54	Denmark	4
55	Sweden	4
56	Saudi Arabia	4
57	Finland	0

Actions which can be justified to meet financial targets

Proportion responding that one or more of the following can be justified

i) More flexible product return policies

ii) Change assumptions determining valuations/reserves

iii) Extend monthly reporting period

iv) Backdate a contract

v) Book revenues earlier than they should be

Rank	Country	% Would justify
1	Malaysia	80
2	Indonesia	76
3	Nigeria	76
4	Kenya	74
5	Slovakia	74
6	India	70
7	Mexico	70
8	Singapore	70
9	Hong Kong SAR	64
10	Philippines	64
11	Bulgaria	62
12	South Korea	58
13	Saudi Arabia	56
14	Thailand	54
15	Turkey	54
16	Egypt	52
17	Finland	52
18	Vietnam	52
19	China (mainland)	50
20	Ireland	46
21	Spain	46
22	Hungary	44
23	Middle East	44
Average of all markets		42

Rank	Country	% Would justify
24	Germany	42
25	Austria	40
26	Serbia	40
27	South Africa	40
28	Sweden	40
29	Czech Republic	38
30	Greece	38
31	Netherlands	38
32	Romania	38
33	Switzerland	38
34	Baltic states	36
35	France	36
36	Slovenia	36
37	United Kingdom	36
38	Ukraine	36
39	Croatia	34
40	Japan	34
41	Luxembourg	34
42	U.S.	32
43	Belgium	30
44	Poland	30
45	Taiwan	30
46	Portugal	28
47	Russia	26
48	Australia	25
49	Canada	24
50	Norway	20
51	Chile	16
52	Colombia	16
53	Denmark	16
54	Italy	16
55	Argentina	8
56	Israel	8
57	Brazil	4

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