

Global White Collar Crime Survey: Anti-bribery and corruption

As enforcement authorities across the world ramp up efforts to investigate and prosecute corruption, compliance programs are becoming more important than ever

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Global enforcement of anti-corruption laws is growing

Countries around the world are adopting and enhancing anti-corruption laws at an ever-increasing rate, and global enforcement is keeping up

An effective compliance program can help prevent or detect wrongdoing by employees. It can also allow a company an opportunity to stop inappropriate practices at an early stage and take remedial actions. Even if the inappropriate practices have become the subject of a government investigation, an effective compliance program still holds value. Some jurisdictions recognize such programs as a defense, others view them as a mitigating factor in determining the nature of any enforcement action and the resulting penalties that may be imposed.

Given the increasing importance of anti-corruption compliance programs, we have ventured—with the assistance of independent researchers at the University of Manchester—to gauge the views of companies across industries and geographies on how their companies were faring in regards to compliance and what challenges they were facing. The anonymous responses have been instructive in both confirming how far compliance has come and in identifying how it might be improved in response to global anti-corruption compliance risk.

The study validated the importance of compliance programs and of compliance professionals in responding to corruption risks, and highlighted opportunities for enhancing effectiveness. The results emphasize the key role of managers and employees outside of the compliance department—who are often most likely to encounter misconduct—as sources of information about the design and effectiveness of compliance programs, and relatedly, of appropriate training programs that help create a positive environment in which such reports can be made. The survey also revealed challenges that could undermine the effectiveness of compliance programs. Companies must be vigilant in ensuring strong management support for compliance. This support should be propagated through both messaging and action, especially in circumstances when compliance may jeopardize achieving immediate business opportunities or objectives. Similarly, companies must be aware of how personal compensation incentives may threaten the effectiveness of compliance programs. We discuss these and other results of the survey in the pages that follow. The complete results of the survey can be viewed at www.man.ac.uk/Xib2Pk

Survey methodology

The survey was carried out through an online questionnaire, consisting of 82 questions in total (respondents did not answer all questions; the questionnaire was designed so that it could be completed by individuals in different organizational roles and with different experiences, and adapted to each respondent based on their answers to particular questions). The survey was developed through collaboration between White & Case and researchers from the University of Manchester, and using responses and feedback from a pilot survey conducted with

16 respondents. The survey was distributed to potential respondents via a number of different methods, including social media, direct email contact with relevant companies and a panel data company. Data was collected over a period of three months, from September to December of 2017. In total, 252 respondents completed the survey, from a range of industry sectors, with different roles, positions and responsibilities within their organization, and based and operating in various parts of the world.

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Many companies still do not have an ABC policy

Appropriate systems and controls prevent the rise of a corporate environment in which unethical or unlawful behavior is ignored

Businesses operating in today's global marketplace need to ensure that they have appropriate anti-bribery and anti-corruption systems in place. Such measures are essential to ensure that employees are aware of the rules, standards and of the culture that is promoted within their company, and know how they should react if they have an opportunity to bribe, or indeed if they learn of—or are confronted with—a request for an illicit payment.

When asked whether their company has a formal ABC policy, 19 percent of respondents reported that it did not, and a further

10 percent were unsure as to whether or not such a policy existed at all within their organization.

These responses give rise to some concern, because having a policy known by and accessible to employees is a key element in any anti-bribery framework, without which there are unlikely to be any other anti-corruption measures in place. The existence of such a policy is an important signal to staff that ABC is on the corporate agenda. That 10 percent of respondents did not know whether their employer has a formal policy is also a cause for concern as it suggests that either there is not a policy, or that the policy



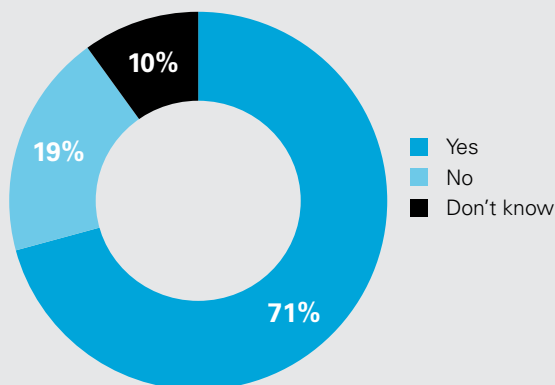
71%

of respondents said their companies had ABC policies in place

has not yet been implemented, or that company communication and training efforts related to the policy are simply not effective.

Given the importance to companies doing business internationally of having an effective anti-corruption compliance program, an unacceptably large proportion of companies appear to be lacking the most basic component of such a program. Without a formal ABC policy and adequate training in place, organizations will struggle to provide adequate guidance to employees as to appropriate ethical practices as they navigate and compete in the global marketplace.

Does your company have a formal policy on anti-bribery and corruption?



Without a formal ABC policy and adequate training in place, organizations will struggle to provide adequate guidance to employees.

Mixed signals dilute commitment to ABC compliance

Senior and middle management’s commitment to ABC is crucial to building a corporate culture that clearly and consistently challenges bribery and corruption

Responses from the survey indicate that there is generally high support for anti-bribery and corruption (ABC) initiatives from senior management and direct managers within companies, with a range of policies and procedures being adopted. These include both external messages (such as statements on a company website) and internal communications (messages and warnings on ABC compliance sent out to staff, a Code of Conduct and ABC topics as board-level items for discussion). A clear majority of respondents also felt that senior management supported and reinforced ABC initiatives introduced by the compliance team. These are all positive signs given the significance of senior and middle management



of respondents from legal/compliance function say they have sometimes felt under pressure to approve third-party engagement despite ABC red flags

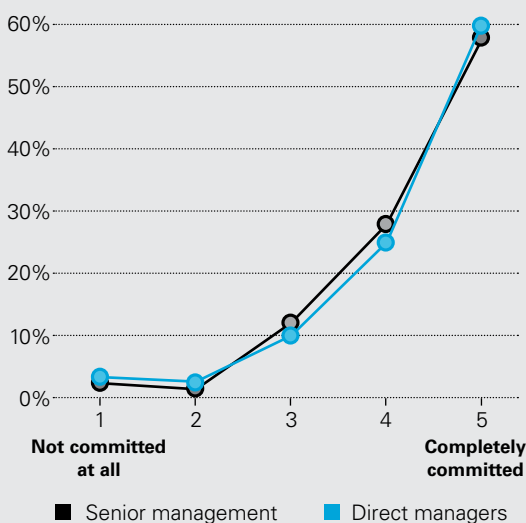
engagement in generating a corporate culture that clearly and consistently challenges bribery and corruption.

Despite this strong “tone from the top” and “tone from the middle,” there is a perception that some business leaders may be less enthusiastic when the practical implementation of ABC procedures might impede or otherwise threaten their business objectives. For example, when respondents from the legal/compliance function were asked whether they ever felt under pressure to approve third-party engagement despite the presence of ABC red flags, 40 percent responded that this occurred at least sometimes. It certainly appears that in some quarters when a deal or

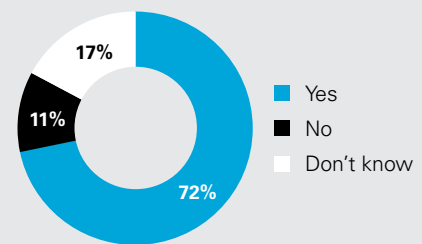
other initiative is potentially placed in jeopardy because of ABC issues, the ethical commitment otherwise shown by senior management can become somewhat diluted – with the deal taking priority over compliance objectives.

One way of restoring faith in ABC commitment is for companies to ensure that their business objectives include the achievement of compliance goals, and for employees to be measured, performance-wise, in this respect. The “tone from the top” needs to percolate throughout the company and be visible in tangible demonstrations of the commitment to compliance, and not simply be symbolic in nature.

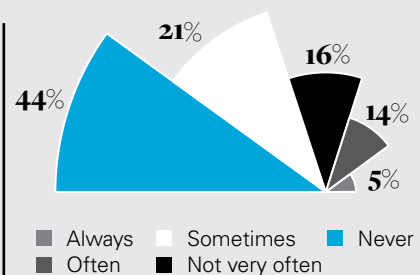
How committed are senior management and your direct manager(s) to ABC?



Does senior management support and reinforce anti-bribery and corruption initiatives introduced by the compliance team?



How often do you feel under pressure to approve the engagement of a third party despite bribery and corruption red flags?



Who benefits from bribery?

There is a clear perception that employees who pay bribes on behalf of their organizations also benefit, both personally and professionally

Almost half of respondents (48 percent) thought that people who pay bribes on behalf of a company could also benefit personally, reflecting a perception that there is a clear upside to paying bribes on behalf of a company—at the individual level as well as corporate.

Sixty-four percent of those respondents felt that the individuals concerned would be given special status following their success in bringing in contracts, and 60 percent thought that they would be promoted for meeting company targets. Other financial benefits, such as “earning more commission” or “bigger bonuses” and even receiving “kickbacks” themselves, also featured in the responses.



48%

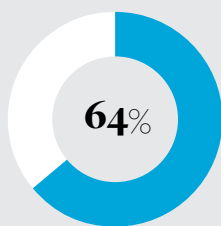
of respondents thought that those who pay bribes on behalf of a company could benefit personally

How should companies respond to these findings? What preventive, concrete, measures can be put in place to ensure that bribery will not be rewarded on an individual level? One option might be for more extensive analysis of how employees in higher-risk positions or jurisdictions meet their business targets and are measured or incentivized in terms of their performance. In parallel, when it comes to larger contracts (particularly with more red flags from an ABC perspective), companies might also consider adopting additional due diligence procedures before and/or after closing to ensure compliance with company anti-corruption policies and procedures.

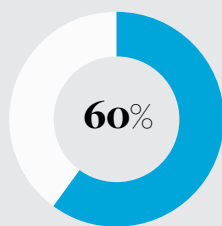
Another option might be to adopt clawback provisions in company policies and/or in individual employment contracts to allow the company to recoup performance payments to employees if it is later determined that employees attained the requisite performance thresholds through improper means.

Taking a closer look at how employees in high-risk positions and jurisdictions are incentivized for their performance, conducting thorough due diligence before deal closing, and adopting clawback provisions can all go a long way towards discouraging a potential wrongdoing.

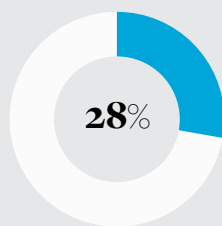
In what ways do you think individuals who pay bribes on behalf of the company could personally benefit?



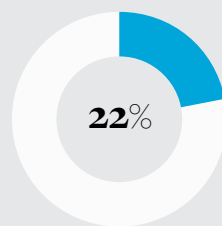
They would be given special status following their success in bringing in contracts



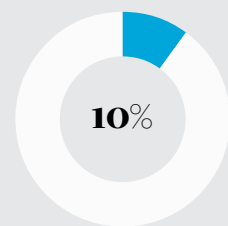
They would be promoted for meeting the company targets



It would ensure their job security



It would help them be accepted as part of the “club”



Other

Percentage of respondents who think that people who pay bribes on behalf of their company could personally benefit (respondents could select multiple answers)

Who spots corruption?

When it comes to corruption prevention, it's not just compliance professionals who can spot opportunities for potential wrongdoing

As compliance gatekeepers, the legal/compliance professionals of any organization are generally perceived to be the ones who are most aware of whether opportunities for bribery exist, and how to eliminate them.

The survey results show, however, that in reality those who work outside of the legal/compliance department are the ones more likely to spot such opportunities. Thirty-nine percent of respondents in non-legal/compliance roles (i.e., sales, marketing, etc.) thought it would *definitely* or *probably* be possible for someone in their role to offer a bribe to a public official for preferential

treatment. In contrast, only 25 percent of those in legal/compliance roles believed that these employees would have such opportunities to offer a bribe.

Non-legal/compliance professionals therefore appear to be more aware of opportunities within their organization to bribe. This result is perhaps not entirely surprising. Legal and compliance professionals may be very familiar with the compliance structure within their company, but who is better to spot the gaps in that structure than those on the ground, who may face practical challenges on a regular basis?

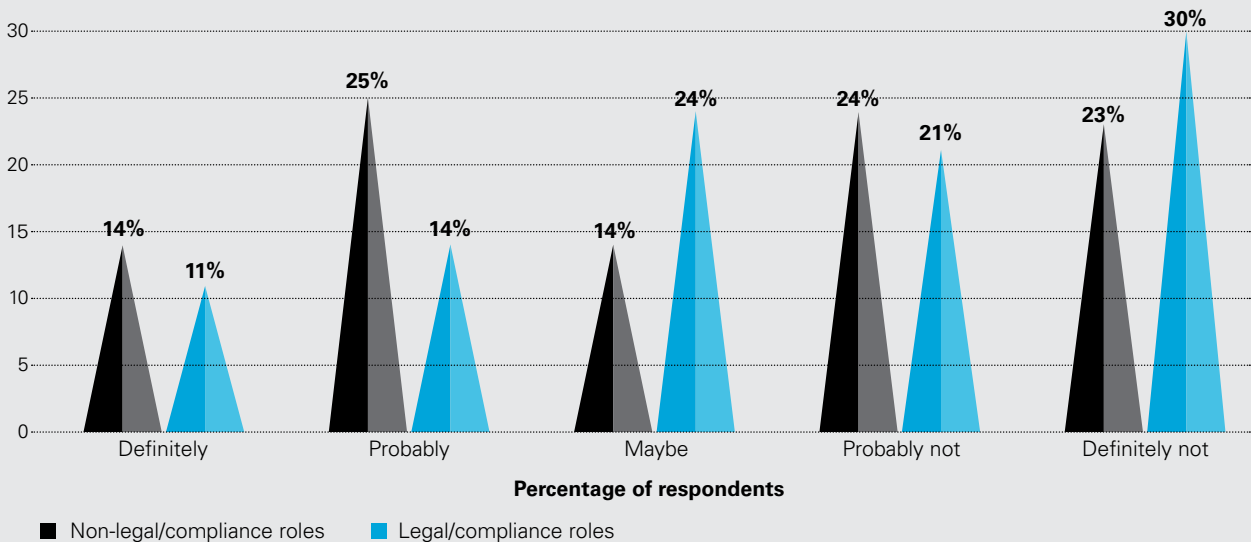


39%

of respondents in non-legal/compliance roles thought it would be possible for someone in their role to offer a bribe to a public official for preferential treatment

Customer-facing employees have direct access to knowledge that is outside the daily purview of the legal/compliance function, and as such could be an important source of information for companies when they consider how to enhance their ABC compliance programs. Organizations would do well to intentionally involve these employees as stakeholders in the compliance process and use their collective experience when creating, implementing, and stress-testing anti-bribery policies and procedures.

Would it be possible for someone in your company or role to offer a bribe to a public official to obtain/retain preferential treatment?



Who do employees turn to when they suspect bribery?

While “tone from the top” is clearly important in framing an organization’s ABC policies and culture, it is often the relationships that employees have with their immediate managers that is central to the ABC response

The survey aimed to explore the types of reporting processes that are used when an employee suspects that bribery has occurred. Respondents in roles outside the legal or compliance function were asked whom they would notify in the first instance if they suspected a bribe had been paid by one of their co-workers, or had been paid or authorized by their direct manager.

Respondents indicated that if they suspected a bribe had been paid by one of their co-workers, in the first instance they would be most inclined to raise the issue internally (88 percent) with their *direct manager* (33 percent) or both their manager and the compliance/legal function (24 percent), rather than externally. If the respondent’s direct manager were implicated in the bribery, reporting would still remain internal (78 percent),



88%

of respondents said they would be most inclined to raise the issue of a suspected bribe internally

but respondents were more likely to notify the compliance or legal department (39 percent) or senior management/the board (37 percent).

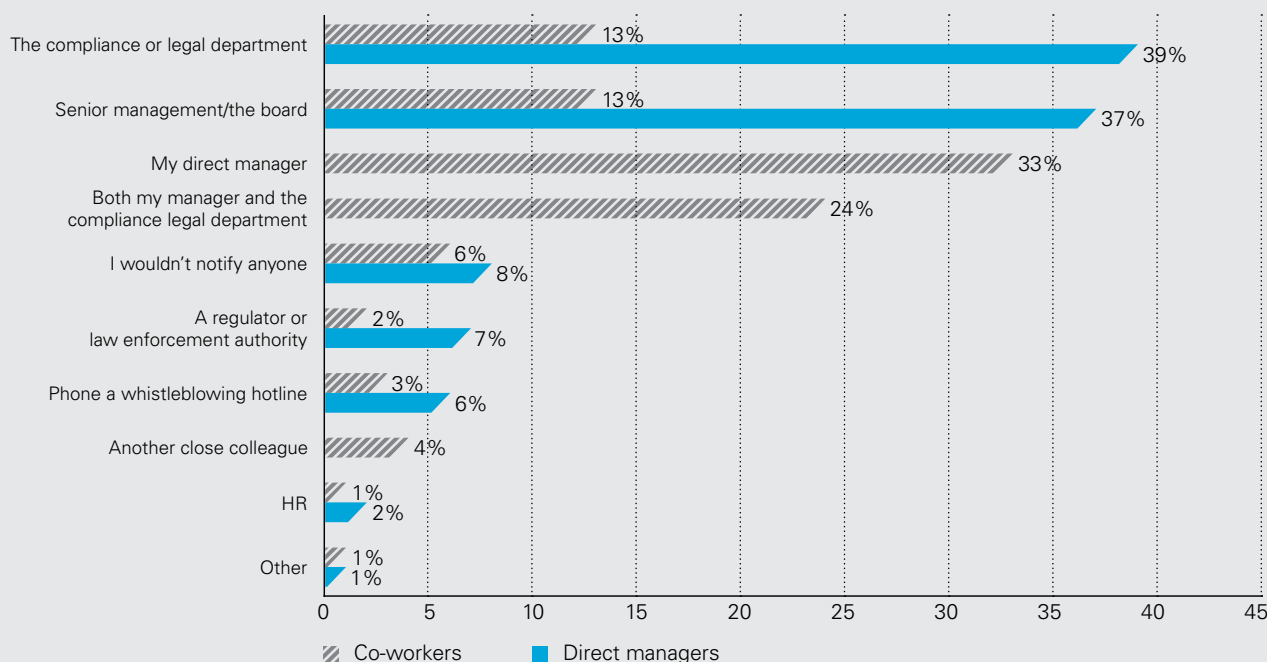
While the “tone from the top” is clearly important in terms of framing the ABC policies and culture within the organization, it can be convincingly argued that, in operationalizing these policies, it is the “tone from the middle” that is central to the ABC response. The relationships that employees have with their immediate managers are key to ABC. As direct managers are the first point of contact within the organization, these relationships are fundamental to engendering ethical working environments.

These responses also demonstrate that reporting of ABC issues is much more likely to be internal than external. This metric is a good indicator of functioning internal compliance

systems—indeed, a preference for immediately notifying an enforcement authority would indicate a lack of trust or confidence in the internal reporting mechanisms. Six percent of respondents also indicated, however, that they would not notify anyone, so businesses should ensure that their employees are well trained on mechanisms to report suspected bribery as well as on any policies that require or at least encourage such reporting.

Internal reporting of ABC issues signals a well-functioning internal compliance system. But it is critical to ensure that management at all levels is trained to handle ABC issues and act appropriately with the information when such concerns are reported to them.

Whom would you notify in the first instance if you suspect a bribe has been paid by one of your co-workers or authorized by your direct manager?



Compliance personnel are getting it right when it comes to ABC

Compliance functions are key to detecting—and deterring—bribery in any organization. The good news is that, in most instances, the teams are up to the task

Compliance personnel are the company's front-line defense against bribery and corruption. Without them, the risks faced by the organization cannot be properly identified, prioritized, monitored or mitigated, exposing it to both reputational and operational risk. It is fundamentally important that the culture, structure and resources of the company be directed as much as reasonably possible at maximizing the effectiveness of the compliance function.

From an ABC perspective, the compliance function is key to both detecting and deterring bribery on behalf of an organization. The survey confirms that the significant majority of respondents felt that compliance personnel were getting it right—with 75 percent indicating that this function was the one most likely to detect bribes. This result will come as welcome news to compliance professionals, who are sometimes forced to operate in challenging corporate environments with less support than might be hoped.

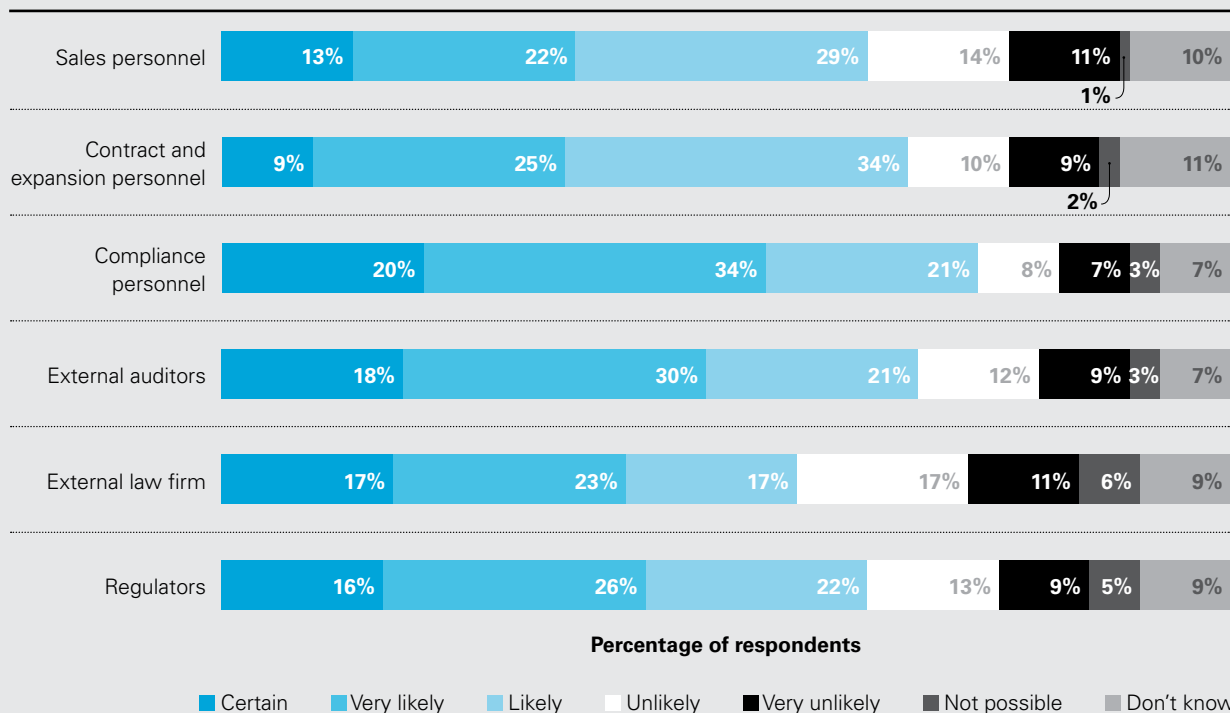


75%

of respondents felt that compliance personnel were getting it right in detecting bribes

These findings emphasize the importance of investing in a strong compliance function. Full support from senior management is required, ensuring that there is both sufficient independence but also that compliance works effectively alongside the business.

How likely is it that members of the following groups would detect bribes?





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White & Case LLP
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200 South Biscayne Boulevard,
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United States

Chicago

White & Case LLP
227 West Monroe Street
Suite 3900
Chicago, Illinois 60606-5055
United States

New York

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Washington, DC

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20005-3807
United States

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