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Steering the Course

Navigating bribery and corruption risk

A global study by Hogan Lovells



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Introduction



Crispin Rapinet, Global
Head of Investigations,
White Collar and Fraud

The saying goes “With great power comes great responsibility” and the fight against bribery and corruption is a clear example of this. Companies have to balance their appetite for growth with the equally important need to comply with global regulatory standards.

It’s a tall order for any company to find this balance, but the bottom line is clear: businesses need to put anti-bribery and corruption (AB&C) firmly at the top of their corporate agenda and demonstrate unwavering commitment to compliance, from the CEO down.

We carried out this study to determine how companies are coping with this challenge at a time when risk and regulation are increasing globally. With two fifths (40%) of compliance officers admitting that AB&C is not one of their CEO’s top priorities, there is clearly still a long way to go.

In this report, we explore the two biggest issues facing compliance teams in 2016: tone at the top (the influence of senior management over the rest of the organization) and implementing compliance programs on a worldwide basis. 60% of the people we spoke to admit they are better at creating programs than implementing them, and a worrying proportion fail to tailor programs to different markets.

In the context of an uncertain economic future and constant budgetary constraints, each company must decide where to set the bar for compliance. The challenge is to deliver a cost-effective program that delivers sufficient legal protection and to implement this across all markets – with their myriad cultures and notions of what constitutes illicit behavior.

Aware of the difficulty in determining a sufficient level of compliance, we have also brought together our in-depth knowledge from across the globe to create a comprehensive AB&C benchmarking model. It outlines what a basic, intermediate, and advanced compliance program might look like and what companies should be striving to achieve across a range of important areas.

To assess your AB&C program and determine practical next steps to understanding where to set the bar in your organization, visit www.hoganlovellsabc.com or speak to one of our lawyers.

This study is based on interviews with more than 600 chief compliance officers (CCOs), heads of legal or equivalent globally, of companies with revenues of over US\$350 million, augmented by the insights of our global Investigations, White Collar and Fraud practice. We hope it helps organizations understand the challenges of AB&C compliance today and how these can be overcome.

Steering the Course is the first in a series of reports on the biggest risks facing compliance teams today and the gaps that require targeted investment. In later reports we will be looking at other key areas of concern, such as AB&C compliance in relation to mergers and acquisitions and the use of third parties.

To keep up-to-date email us at: abc@hoganlovells.com.

Tone at the top

Senior leadership teams need to demonstrate more commitment to bribery and corruption prevention and demonstrate that it is part of the company's DNA

Every member of staff has a part to play in managing the risk of bribery and corruption, but the senior leadership team sets the moral compass for the whole organization to follow. With prosecuting authorities around the globe keen to hold individuals, (as well as corporates), criminally accountable for failing to prevent bribery, CEOs and boards must actively demonstrate their commitment to reducing risk.

Despite this, only 60% of CEOs regard AB&C as one of their top priorities. Tellingly, it is not a standing item on the board agenda in 44% of companies. This suggests that other items – perhaps more profit-focused or short-term issues such as cost containment – are taking precedence.

This is further evidenced by the fact that only 39% of CCOs report directly to the CEO, with many instead reporting to the CFO or general counsel. This lack of a direct reporting line may impact how seriously the rest of the organization takes AB&C compliance, not to mention how well senior management understands the bribery risk in their business.

More than half (58%) of CCOs admit their advice to the CEO gets filtered by others, making it extremely difficult, if not impossible, for chief executives to make informed decisions about business strategy in light of any potential associated compliance risks. This raises structural questions as to whether companies need to reconsider reporting lines in light of a rapid increase in legal exposure in this area.

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More than half (58%) of CCOs admit their advice to the CEO gets filtered by others.

A lack of training is perpetuating this issue, with over two fifths (41%) of CEOs not undergoing regular AB&C training. Specific training should be provided to managerial level employees, including tailored training for the CEO, so that they understand what motivates employees to act compliantly and ethically and so that they have the tools necessary to motivate ethical behavior.

Profits and returns are clearly high on the agenda for CEOs – 43% are not prepared to walk away from a contract with high bribery and corruption risk. Some may even be reluctant to admit that bribery and corruption takes place: more than half (56%) of CCOs report denial is a major challenge.

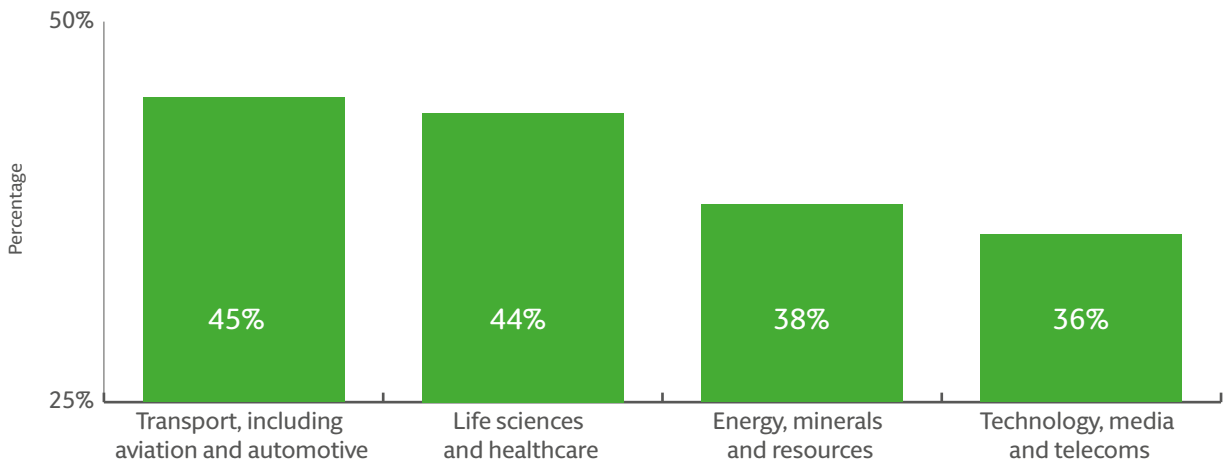
This appears to go some way in explaining why 39% of CEOs do not openly support the fight against bribery and corruption, even though today's business environment renders this a core competency of any global business leader. With the stakes so high, CEOs need to learn how to balance this with all the other demands on the business and acknowledge its importance – both personally and externally – through how they behave and interact with their workforce.

The senior leadership team sets the moral compass for the whole organization to follow.

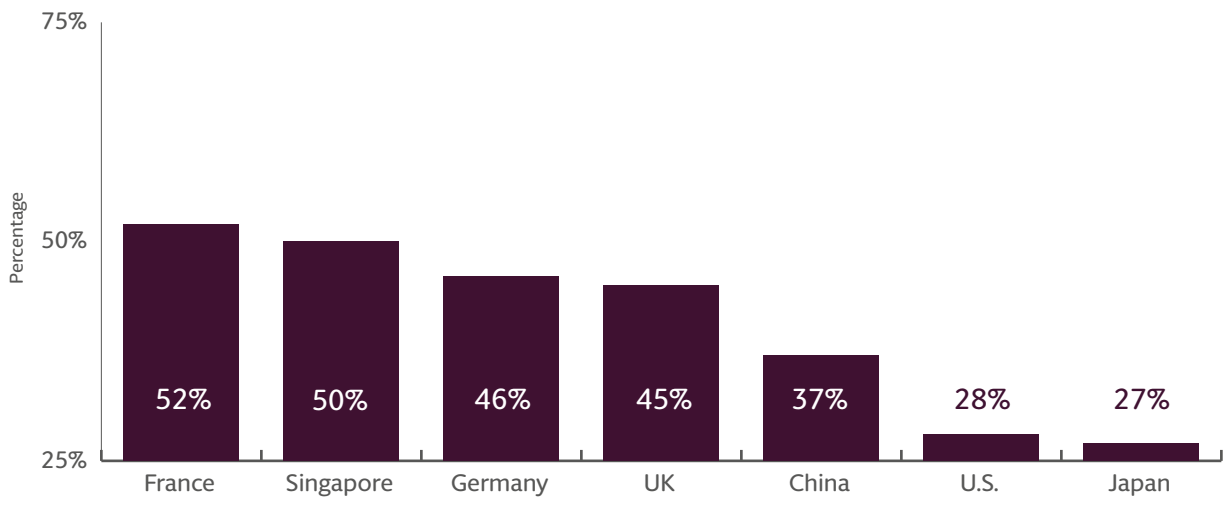


Anti-bribery and corruption is not one of the CEO's top priorities

Sector insight



Regional insight



Advanced compliance program Tone at the top

Compliance and ethics should be fully integrated into all operations. Senior management must emphasize the importance of compliance and ethical conduct as a core value and strategy, so employees are in no doubt that ethical conduct takes precedence over the pursuit of profit.

Case in point

Tone at the top is the first place a regulator will look, believing that a genuine commitment to AB&C drives everything else in the organization. As such, attitudes to these issues at the top have a critical impact on how organizations are coping with increasing regulatory pressure. However, the CEO is just one person and, however international, is inevitably less attuned to the cultures and attitudes of some markets than others. How can companies ensure that bells ring when they should? And how can they overcome the enormous challenge of helping everyone in the organization to understand what constitutes non-compliance?

Some of the most advanced organizations we see appoint local champions in each of their markets. These individuals, often middle managers, are trained to a higher level, speak regularly about global enforcement and are responsible for ensuring that the purpose of the program is translated and understood effectively by the local workforce. They provide an extra set of eyes as to what is actually happening on the ground and make sure that the tone at the bottom fully reflects the tone at the top.

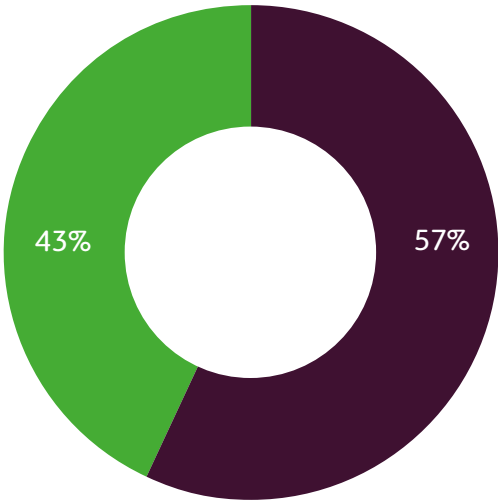
Further guidance on the tone at the top can be found in the Hogan Lovells AB&C benchmarking model.



Confessions of a compliance officer

“The CEO is too busy to respond to compliance, so people do not fully report on compliance issues.”

– Chief Compliance Officer of a global transportation company,
(20,000+ employees)



43% of CEOs would not walk away from a contract with high bribery and corruption risk



Profits over prevention?

Corporates need to be aware of how a lack of visible commitment to anti-bribery and corruption filters down through the organization

Any lack of support and commitment from senior management can trickle down through the rest of the business.

More than half (59%) of CCOs say people fear losing their jobs if they don't meet their sales targets, while 57% say that sales pressure and incentives are two of the biggest challenges when trying to reduce the risk of bribery and corruption.

A lack of direction from the board and senior management about how to balance targeting profit with managing the compliance risk can result in some dangerous business decisions being made. In some cultures, there is a risk that bribery and corruption is still simply seen as an inevitable cost of doing business.

The consequences of failing to have adequate procedures in place to prevent corruption can be calamitous. VimpelCom Ltd's recent mammoth settlement of US\$795 million with the U.S. Department of Justice, the U.S. Securities and Exchange Commission, and Dutch regulators has highlighted how neglecting compliance in favor of market penetration in risky jurisdictions can be very costly. This is a problem that affects the established markets as well as the emerging markets and can no longer be ignored.

Following a long-running investigation, Olympus now faces a US\$646 million settlement payment to resolve criminal and civil charges for (inter alia) kickbacks paid to American doctors and hospitals. The prosecuting U.S. District Attorney was unequivocal, saying that Olympus "dropped the compliance ball". These words should resonate across the boardrooms of multinational corporates. Prosecutors around the world are keen to demonstrate that dropping the ball on compliance in favor of maximizing profits will not go unpunished.

57% of CCOs say that sales pressure and incentives are two of the biggest challenges when trying to reduce the risk of bribery and corruption.

More than half (53%) of CCOs also say that the resistance they encounter from the rest of the business is due to people feeling that compliance conflicts with what they are expected to achieve. This is most pronounced in the technology, media and telecoms sector (TMT), with almost three fifths (57%) of CCOs admitting that this is a major issue, compared to 50% in the transport, aviation and automotive sector. In many cases, TMT companies have expanded very quickly so have less developed internal structures, a young workforce and are very driven by targets. CEOs and compliance teams in the TMT sector should be particularly alive to this.

Our research further reveals that people do not generally regard AB&C as a positive force for the greater good. More than half (53%) of CCOs say their company sees it as an unnecessary headache that gets in the way. For 49% of compliance teams, AB&C is still seen as a taboo in their business. Interestingly, this grows to 61% for CCOs in Japan.

A lack of direction from the board and senior management about how to balance targeting profit with managing the compliance risk can result in some dangerous business decisions being made.

One of the most common problems we see is programs not being read by staff – tantamount to programs falling at the first hurdle. This is particularly concerning as our research suggests that companies are increasing their level of investment in AB&C, yet this could be failing to deliver a commensurate reduction in risk.

Traditionally, companies have erred on the side of caution and produced lengthy documents with a considerable degree of technical language and detail. In reality, this can deter people from reading the policies and make them difficult to interpret and hard to refer back to quickly, causing people instead to default to their own moral compass.

Organizations must be brave and distil the essence of the program into fewer words, producing short-form policies that help people to determine what is acceptable and when to exercise caution.

Two fifths (40%) of companies do not have a whistleblowing hotline, suggesting either that AB&C is not a top priority or that some of the cultural sensitivities around whistleblowing, in continental Europe in particular, still prevail. Those that do have one in place report that it is well known, well understood and widely used, suggesting that its implementation has been a worthy addition to the company's approach. A hotline demonstrates that a company is taking compliance seriously. With huge financial incentives for employees to whistleblow directly to the authorities (such as the financial 'bounties' provided for in the Dodd-Frank legislation in the U.S.), companies have every incentive to encourage employees to blow the whistle internally.

A hotline demonstrates that a company is taking compliance seriously.

The Human Resources team should be at the forefront of applying the company's AB&C compliance program. AB&C ethics should be embedded in the organization's approach to recruitment, promotion, training, operations, communication, internal controls, performance evaluation, remuneration and recognition.



Confessions of a compliance officer

“All employees need to understand internal and external factors, and one of our greatest challenges is ensuring compliance always overrules profits or the business needs.”

– Chief Compliance Officer of a global transportation company, (2,000 to 4,999 employees)



Advanced compliance program Whistleblowing

Monitoring and reviewing compliance and ethics is critical to understanding how effective a company's compliance program is, and how to minimize risks in the future.

Case in point

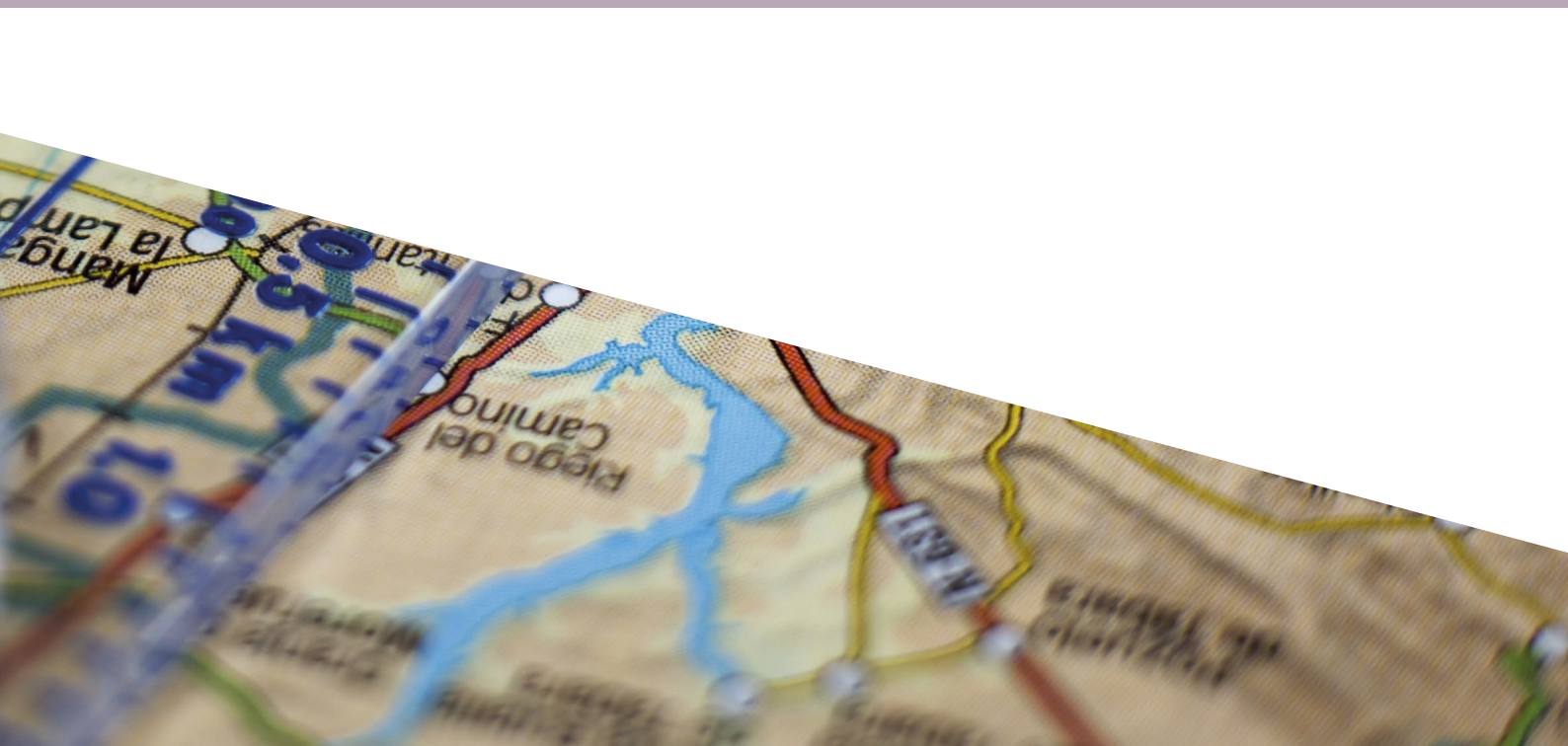
An active whistleblowing mechanism should be in place. A whistleblowing mechanism handled by an external specialized company can offer the whistleblower the option to report anonymously, orally or in writing. Under no circumstances should a disciplinary action or a retaliation of any kind be taken against an employee for reporting violations or the attempted violation of the company's compliance rules. Companies should ensure that employees are informed of the existence of the whistleblowing mechanism and establish a leniency program for employees who report wrongdoings. Each whistleblowing incident should trigger an efficient and reliable investigation and result in sanctions, if appropriate.

The whistleblowing scheme should be explicitly encouraged and publicized by management, framed in terms of individual responsibility. It should be supported by a written pledge that the identity and position of whistleblowers and the details of any report made will be protected and kept confidential. It should also set out the thresholds for 'blowing the whistle', as well as the relevant reporting channels and the investigation procedures that will be applied.

All relevant staff should receive regular, interactive and analytical compulsory training relating to risk management, reporting and whistleblowing, which encourages them to actively consider, discuss and report any concerns they may have (which may form part of a publicized "Speaking Up" program), and this training should form part of the induction for new staff. Training programs should be appropriately tailored to specific roles within the organization.

A whistleblowing facility should also be open to third parties, in the context of a contractual or commercial relationship.

Extract from the Hogan Lovells AB&C benchmarking model.



Beneath the surface

Companies need to focus on the challenging task of implementing their anti-bribery and corruption programs globally

Even with a comprehensive risk assessment and anti-bribery program in place, CCOs face significant barriers implementing procedures globally.

In addition to the divide between the CEO and CCO explored in the first section of this report, more than half (57%) of CCOs believe that important operations and decision making functions (such as in relation to mergers and acquisitions and what markets to expand into) are ‘hidden’ from them. As many as 62% are calling to be more involved in conversations in relation to business strategy and risk.

Not only are companies isolating the compliance function, but two thirds (66%) of CCOs also say their company is better at developing guidelines than enforcing them – eroding the program’s potential to reduce the level of risk and comply with the law.

A major difficulty is implementing anti-bribery programs across borders: a growing challenge when the risk landscape of emerging economies looks significantly different to what some businesses are used to. Half (49%) of CCOs admit the geographical distance between them and the rest of the business, and the growing map of geographical locations – including those where they need to work through intermediaries – is increasing risk.

Three fifths (60%) of CCOs say cultural differences contribute to a lack of support for AB&C programs, while a similar proportion (58%) cite a lack of cooperation between different parts of the business as one of their biggest challenges.

Implementation of policies will also be suffering due to a lack of a tailored approach and training. 57% make AB&C guidelines available in all local languages but 28% of companies do not tailor their policies to each market. As many as 53% of companies have only trained half or less of their staff worldwide.

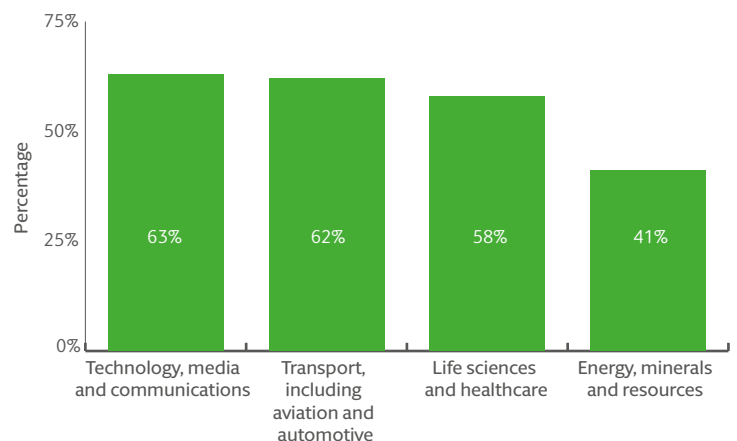
66% of CCOs also say their company is better at developing guidelines than enforcing them.

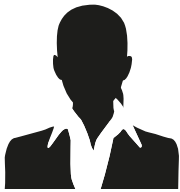
It is unsurprising therefore that a large proportion of the global workforce could not explain, if questioned, what their company’s AB&C policies say. This should be a standard part of their induction and annual training program, and yet more than half (53%) of CCOs say many people in their organization do not know what their procedures and policies are. This is particularly prevalent in Germany (56%), the U.S. (59%) and in the TMT sector (61%).

Further still, 48% of respondents are not sure what a ‘gold standard’ of AB&C compliance looks like. The challenge is that there is no absolute guidance – each company must make its own assessment on where to set the bar based on the company’s appetite for risk and budgetary constraints. Our benchmarking model provides a useful guide to what organizations should be aiming for. Email us at abc@hoganlovells.com for a copy.

Sector insight

“Important operations and parts of the business are hidden from me”





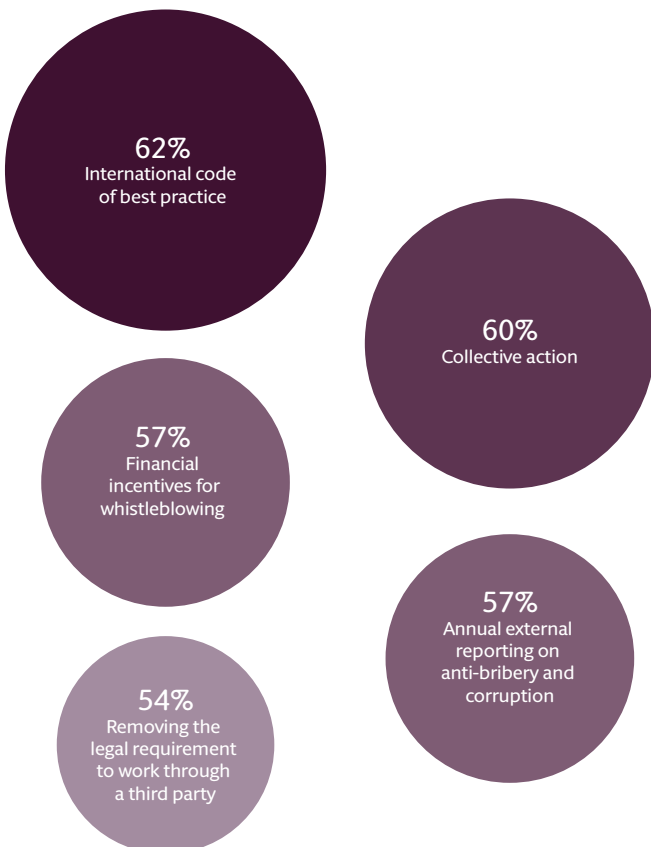
Confessions of a compliance officer

“Slow implementation and a lack of awareness about AB&C amongst employees are of real concern for my business.”

– Chief Compliance Officer of a technology, media and telecommunications company, (2,000 to 4,999 employees)

60% of CCOs say cultural differences contribute to a lack of support for AB&C programs. A similar proportion (58%) cite a lack of cooperation between different parts of the business as one of their biggest challenges.

Initiatives supported by global CCOs



A lack of proper and full implementation also means that this investment could be working much harder and delivering greater returns. Companies need a clear strategy for embedding policies and procedures throughout the organization – from the CEO all the way through to country managers, sales leads, production lines and back office functions, globally.

The best approach to global implementation will differ from one company to another, but with 46% of companies not using local “champions”, 41% not taking advice on how to localize AB&C guidelines, and 39% of compliance teams not visiting local offices, there appear to be a number of unexplored avenues.

48% of respondents are not sure what a ‘gold standard’ of AB&C compliance looks like. The challenge is that there is no absolute guidance – each company must make its own assessment on where to set the bar.

Advanced compliance program Training

A well-designed training program can help deliver compliance messages effectively to employees and other stakeholders of the business, bring about genuine change in their attitudes and behaviors, as well as form a basis for the company to take disciplinary action as needed against employees and other stakeholders who violate the company's policies and procedures.

Case in point

More specific training should be provided to managerial level employees and those who perform a supervisory role to other employees. It should be tailored based on the risk assessment and the training should be a mixture of informative and interactive workshops and discussions. It must be reviewed regularly, making recommendations to management on how to improve it. The lack of training highlighted by this study is a real concern, with ongoing learning and development now an important aspect of AB&C compliance. Training has to be effective, and there are several approaches that we would recommend to ensure that it is as widespread and successful as possible.

Firstly, make training realistic. As this study demonstrates, there is ongoing tension between pressures to comply and commercial pressures on the business. Compliance teams need to acknowledge that this is a real challenge for staff and consider how to set AB&C policies in context, in order to minimize the tension between these competing factors.

Secondly, make training useful. This might involve using games and real life case studies to engage employees, interest them and make the company's required behaviors memorable. Thirdly, companies have to make training relevant to each market. In some cases, this might involve using local trainers, local language training courses and a more regular schedule of events.

Further guidance on training can be found in the Hogan Lovells AB&C benchmarking model.

Regional insights

The cultures in different markets have a significant impact on corporate performance and standards of compliance

In the U.S. and worldwide, the global traction of FCPA enforcement holds pace. The FCPA has led to over 200 cases covering activity in about 80 countries.

Companies with the greatest awareness of AB&C are based in countries with a strong political voice coupled with effective anti-bribery laws that are aggressively enforced, such as the U.S. and, more recently, China.

Within the past five years, China in particular has seen a step change as the Chinese government has taken a strong stance against bribery and corruption and enforcement has risen significantly. In 2013, the Communist Party of China passed the Decision on Major Issues concerning Comprehensively Deepening Reforms, which sought to improve the laws and regulations on combating corruption.

In the U.S. and worldwide, the global traction of the Foreign Corrupt Practices Act (FCPA) enforcement holds pace. The FCPA has led to over 200 cases covering activity in about 80 countries.

More stringent regulation is of course a global trend. 71% of chief compliance officers in France and 74% in Germany say regulatory pressure is increasing. It is a similar picture in the UK, with 69% of teams feeling the regulatory strain. It comes as no surprise then that 61% of CCOs globally say AB&C is more challenging now than ever before, rising to 66% in the U.S. and Asia.

61% of CCOs globally say AB&C is more challenging now than ever before.



As well as regulatory and governmental pressure, transparency is also seen as a necessity for large businesses. 69% of CCOs say there is increasing regulatory pressure for greater transparency, on issues such as the amount paid to advisors and government officials, rising to 76% in the U.S. and 80% in Japan. This could be in part due to an increasingly savvy public and media with greater awareness of these issues than ever before, and highlights that a more open and honest way of doing business is now expected.

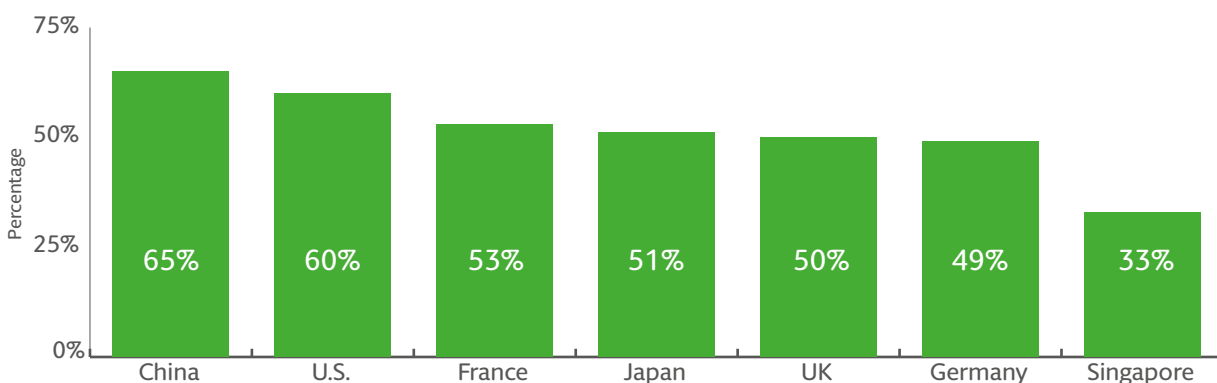
While companies globally are making promising steps towards better compliance, current programs are at risk of falling short of new regulatory standards. 63% of CCOs globally say their business needs to do more to prevent bribery and corruption, with more emphasis on cost effective solutions. This is particularly felt in the U.S. and Japan where three quarters of CCOs feel more needs to be done (74% and 73% respectively). Half (49%) of compliance teams globally also believe their current procedures are not fit for the future, signaling the need for immediate improvement.

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With more than half (53%) of CCOs globally describing their organization as being in a “crisis of compliance”, now is the time for businesses to implement change, align their priorities with compliance teams, and ensure the risks and implications of bribery and corruption are understood by all employees. To provide greater clarity and guidance on AB&C compliance, compliance teams support the introduction of industry guidelines on adequate procedures (54%), an international code of best practice (62%), and annual external reporting on AB&C compliance (57%).

Regional comparison

My organization is in a “crisis of compliance”



Latin America



Isabel Carvalho
partner, São Paulo

The involvement of Latin American countries in U.S. Foreign Corrupt Practices Act investigations and the rise of more democratic political regimes has led to a significant improvement in AB&C regulation and enforcement in the last seven years.

Today, the most mature markets have laws that necessitate the implementation of an effective AB&C program, and companies have been quick to respond.

In fact, recent high profile cases have caught the attention of everyone in the business, not just the CEO but right the way down to managers and beyond. Tone at the top is essential to get right, but we have been impressed by the level of attendance and engagement at recent training seminars from all levels of the business.

Foreign investors entering Latin America have demonstrated an acute awareness of enhanced levels of regulatory enforcement. AB&C is now a core component of their due diligence.

Foreign investors entering Latin America have also demonstrated an acute awareness of these enhanced levels of regulatory enforcement. AB&C is now a core component of their due diligence, with investors demanding evidence of adequate procedures from the seller and taking this very seriously.

Of course, culture shifts are always a challenge – Colombia is the only country in Latin America to have passed a law on whistleblowing, for example, as this cuts across the cultural norms in the region. Companies now need to adapt to this changing environment and must keep a watchful eye on how the political environment is changing.

Africa



Tony Canny
partner, Johannesburg

Africa has historically been regarded as a region where anti-bribery and corruption laws are either not enforced, or not enforced in the same way as they are in, for example, the U.S. and the UK. However, multinational companies that are registered or operate in Africa today face a double-edged sword of compliance, from both foreign and national authorities.

With South Africa leading the way, other countries including Tanzania and Nigeria are now also issuing strong messages about clamping down on corporate corruption and imposing significant penalties. African anti-bribery and corruption laws are just as strict as those from markets such as the U.S. and the UK, and local authorities have initiated a number of high profile investigations.

The most common challenge for chief compliance officers in Africa is persuading their company to take this seriously.

Multinational companies that are registered or operate in Africa today face a double-edged sword of compliance, from both foreign and national authorities.

Our study finds that some companies are choosing not to enter African markets due to high bribery and corruption risk, but many are – and a high proportion of those that do operate here have encountered issues with corruption. The most common challenge for chief compliance officers in the region is persuading their company to take this seriously and invest in creating an anti-bribery and corruption compliance program that is fit for the region, and fit for the future.

With so many businesses unwilling to invest in an effective program in Africa, heads of compliance need to enlighten the board as to the real and significant cost of non-compliance in this region, and monitor the increasing political pressure and likelihood of enforcement. The potential fines make the requisite level of investment look miniscule, and there is nothing like the threat of personal prosecution to encourage the board to take this more seriously.

Continental Europe



Sebastian Lach
partner, Munich

The speed of innovation in Europe is increasing, with European authorities becoming more focused on enforcement, including AB&C, and more proactive than ever before. David Green QC, director of the UK's Serious Fraud Office (SFO), for example, has been at pains to show his commitment to enforcing the law. The SFO has achieved a number of "firsts" in 2016, including the first successful prosecution for failing to prevent bribery under the UK Bribery Act.

This means that compliance programs, which are based on traditional attitudes and historic regulatory standards, must catch up. This will involve refining programs based on the company's unique risk profile, such as their industry and geographical locations. This has been the focus of much of our work in Europe and will continue to be the case for the foreseeable future.

At the same time, European companies face new and increasing levels of risk. This is largely driven by commercial pressures such as the need to launch products into new markets where regulatory environments and attitudes towards what is "normal" or "necessary" to do business is different from at home. It is therefore notable that only 55% of compliance heads in the UK, 54% in Germany and 48% in France say AB&C is one of the CEO's top priorities.

Compliance programs, which are based on traditional attitudes and historic regulatory standards, must catch up.

Our research also finds that companies throughout Europe are struggling to enforce their programs globally. Assessing risk is one thing, but translating this into effective policies and implementing them globally is quite another. For example, European businesses have sometimes found the FCPA regulations to be significantly outside of their comfort zone.

Increasing regulatory focus on individuals will no doubt increase companies' desire to prioritize compliance and set the right tone at the top.

European businesses have sometimes found the FCPA regulations to be significantly outside of their comfort zone.

France



Antonin Levy
partner, Paris

France has been regularly criticized for its lack of effective white collar crime regulation. Instead, the FCPA and UK Bribery Act has been used against French companies to regulate conduct that has only a tangential link with the U.S. or the UK. Now France appears to be on the verge of filling this gap where previously we had such indifference in regards to French regulation towards companies' compliance programs.

A governmental bill on the transparency of the economy will imminently be introduced in the French Parliament, creating a National Anti-Corruption Agency, and a "duty [for companies] to prevent risks of corruption".

The newly created Agency will produce guidelines for the newly created duty to prevent risks of corruption. It will also enforce the new regulation by assessing the efficiency of a company's AB&C program and order them to comply should the company's program not be sufficient.

France appears to be on the verge of filling the gap where previously we had such indifference in regards to French regulation towards companies' compliance programs.

The bill also establishes an additional penalty for corruption or bribery offenses, consisting of an obligation for the sanctioned company to implement an AB&C program under the monitoring and supervision of the Agency.

Conversely, the existence and quality of a compliance program will be taken into consideration when considering sanctions for corruption or bribery offenses.

Should it be enacted into law, this bill could be the first major step for mandatory compliance programs for French based-companies and companies operating in France.

Those developments probably explain why 63% of compliance teams in France consider AB&C to be more challenging now than ever before and will bring compliance out of the shadows and into the bright light of French corporate debate.

United States



Peter Spivack
partner, Washington D.C.

Thanks to years of active enforcement by U.S. authorities, U.S. companies have a high awareness of the costs of bribery and corruption and the benefits of investing in its continued development. As companies continue to expand into new markets, and as they confront more sophisticated means of hiding bribery, they need to constantly assess their internal controls and compliance systems. No business, however advanced, can afford to rest on its laurels.

Regulatory pressure and business operations have progressed to the extent that U.S. enforcers expect that AB&C should now be an active and important function of the business, not a static policy or a discrete series of nonintegrated processes. To meet these expectations, companies need to evolve their systems away from a checklist exercise to a dynamic system that changes in line with regulation and risk.

To meet the expectations of U.S. enforcers, companies need to evolve their systems away from a checklist exercise to a dynamic system that changes in line with regulation and risk.

Tone at the top and building a compliance culture throughout a far-flung organization is a significant challenge for many businesses. Although the U.S. does lead on this front globally, 28% of CEOs in the U.S. still do not consider AB&C to be one of their top priorities. More attention to the need for continual development could improve this, if AB&C does become a constantly evolving function that permeates more of the business and workforce.

Not only is the process of AB&C compliance becoming more stringent in the U.S., but now it seems that there is nowhere to hide. Multi-jurisdictional enforcement is growing, law enforcement communication across borders is better, and we have seen an increasing number of cases where multiple forms of conduct are converging in the same investigation – such as cartel and bid-rigging conduct, money laundering, and corruption.



Stephanie Yonekura
partner, Los Angeles

The FCPA remains a highly active area for U.S. regulators, and recent developments give us a much clearer indication of where this regulation might be heading and how companies should react.

The DoJ has expanded its resources beyond Washington into New York and Los Angeles, suggesting that it will continue to focus heavily on investigations involving entities in Latin America and Asia.

The DoJ also announced in July 2015 that it was hiring a compliance counsel for the first time, bringing with her specialist knowledge of compliance systems and the ability to expertly analyze company programs. While she will be focusing on the largest cases, it remains to be seen how these decisions may affect other investigations.

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Organizations must monitor these developments and review their own systems in light of how decisions are being made. We are likely to see a high volume of activity in the life sciences and health sectors, particularly in light of the recent high profile cases such as the allegations against Olympus.

China



Eugene Chen
partner, Shanghai

The development and enforcement of anti-bribery and corruption legislation in China is in hyperdrive, with the country attempting to achieve in the last two to three years what the West has been doing over the last four decades.

This has dramatically changed attitudes and risks for multinational organizations. AB&C is now more of a global concept – as much a reality in China as it is in the West – and penalties for falling foul of the law have been severe. This has led to heightened awareness of bribery and corruption, but also heightened risk as companies now face scrutiny from both Chinese and foreign prosecutors.

These developments add an extra level of complexity to the already significant challenge of implementing AB&C programs globally. Companies are required to ensure that everyone in the business knows what is right, what is wrong and how they are expected to behave. For companies operating in China, this is one of the biggest challenges we see.

Ethics and morality are of course difficult to translate into different markets. This is particularly challenging in countries where hierarchies and relationships play a big part in doing business, and a multinational company headquartered in such a regime will need to tailor its program for different, often higher, regulatory standards overseas.

Ethics and morality are of course difficult to translate into different markets. This is particularly challenging in countries where hierarchies and relationships play a big part in doing business.

Successful businesses devote a lot of time to being on the ground in their markets, and the more proactive companies have started moving board and senior management meetings to rotate through different offices on a regular basis, including China. As well as giving senior managers the flexibility to react immediately to regulatory and enforcement changes, this shows respect for the jurisdiction and demonstrates the tone at the top to local managers and employees.

Our research finds that 65% of heads of compliance in China would describe their organization as being in a “crisis of compliance”. With so many challenges converging, companies cannot afford to stand still; they must keep having these conversations and assess the need to further tailor programs globally.

The development and enforcement of anti-bribery and corruption legislation in China is in hyperdrive.

Southeast Asia



Maurice Burke
partner, Singapore

The impact of AB&C initiatives in Southeast Asia varies dramatically from country to country. Singapore continues to be the “jewel in the crown”, and is frequently ranked as one of the most transparent countries in the world in which to do business. Our study suggests that compliance officers in Singapore remain fully committed to their compliance programs, even against the backdrop of increased rules and regulations (48% agreed).

Change in the region is constant – political, social, and cultural. As with many emerging markets, developing economies in Southeast Asia attract greater risk, but also great opportunity. Vietnam, Indonesia and Thailand, for example, continue to show signs of improvement, with a renewed commitment to tackling bribery, fraud and corruption. This is perhaps linked to various in-country initiatives designed to attract foreign investment. At the other end, Singapore has firmly established itself as a leading business, financial and maritime hub, and with this comes new funds, increased risk of money laundering, and more stringent regulatory standards.

Vietnam, Indonesia and Thailand, continue to show signs of improvement.

Multinationals doing business in South East Asia must be careful when ‘navigating the maze’ of compliance, particularly in relation to interactions with government officials, and dealing with third party providers.

Multinationals doing business in Southeast Asia must be careful when ‘navigating the maze’ of compliance, particularly in relation to interactions with government officials, and dealing with third party providers. A one-size-fits-all approach to the region does not work, and in order to avoid the scrutiny of both international and local regulators, companies need to think carefully about the nature of their business, and the ways in which they can implement a compliance program that is suitably localized to address in-country risks.

For example, evidence suggests that an employee is less likely to use a whistleblowing hotline in Vietnam or Thailand, especially if the person at the other end of the phone is a non-native speaker based in a different country. Localizing compliance programs has to be based on risk, so a factory in Malaysia buying materials via third parties and interacting with government officials is likely to benefit from a thorough assessment. Recognizing and rewarding good behavior is equally important.

While tone at the top is extremely important for every company, there is a significant role for middle management to support and reinforce AB&C measures in regions where local customs and cultures are different to those in the likes of the U.S. and the UK. Unlike the CEO or COO, these ‘local champions’ can engage with employees on the ground to assess the effectiveness of compliance controls and procedures – all of this links back to the need for continuous monitoring and, where possible, benchmarking against competitors.

Research methodology

The study is based on independent opinion research designed and commissioned by Hogan Lovells in January 2016.

The research was conducted amongst 604 chief compliance officers, heads of legal or equivalent at 604 of the world's largest multinational companies.

Respondents were all from companies with a minimum of 2,000 employees and at least US\$350 million turnover, and had been with the company in that role for more than a year.

101 respondents were from the UK, 102 from Germany, 100 from France, 151 from the U.S. and 150 from Asia. Within Asia, 57 were from China, 52 from Singapore and 41 from Japan.

Focusing on high-risk sectors at the heart of global anti-bribery and corruption regulation and investigations, 124 respondents are in life sciences, 138 in energy, minerals and resources, 152 in transport, and 190 in technology, media and telecoms. The research was conducted by Coleman Parkes.



Our team

The Hogan Lovells Global Bribery and Corruption Task Force offers international clients informed advice in a number of areas of risk, from reactive incident response measures to the development of proactive strategies for managing potential exposure through compliance programs.

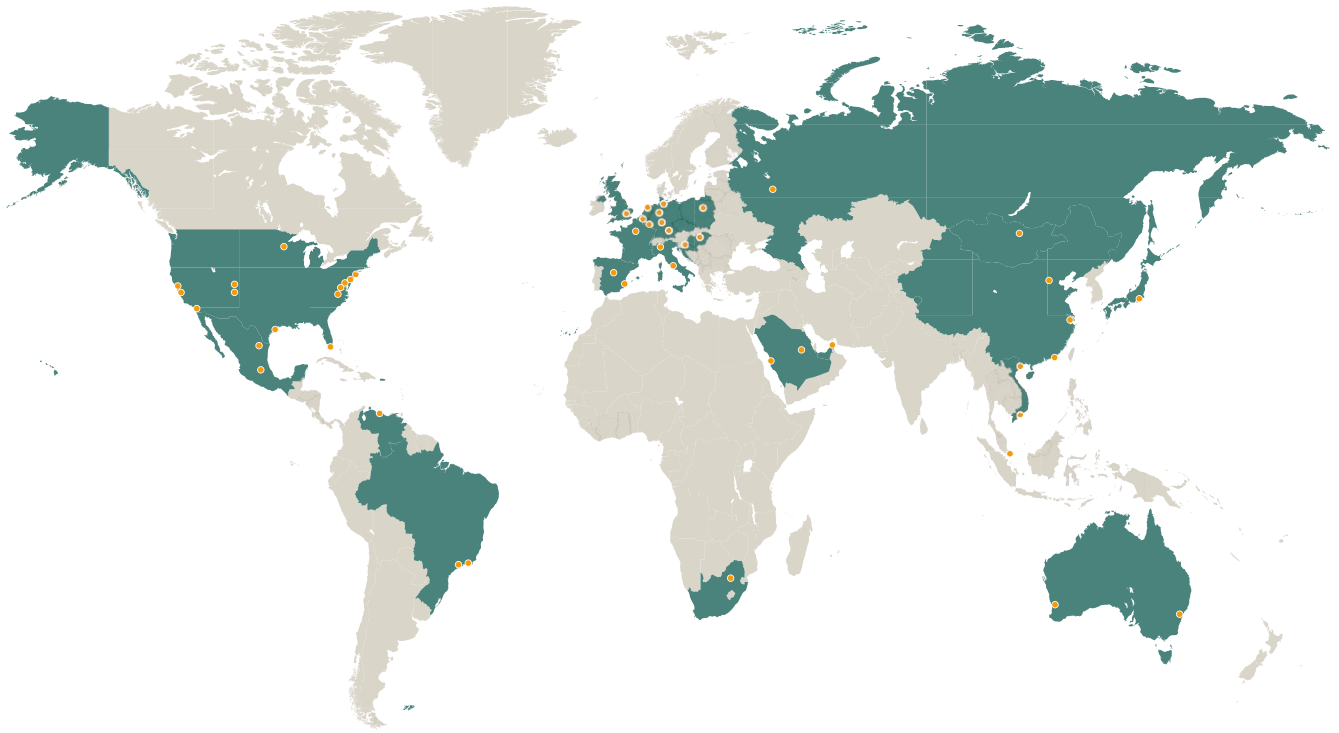
Our task force brings together a cross-jurisdictional team of partners from Hogan Lovells' international network with more than 25 years of experience in large-scale investigations. The task force has real experience on the ground in the U.S. and Europe (including the UK, Germany, Poland, Spain, Italy, and France), as well as in Russia, Asia (including China and Hong Kong), the Middle East, Latin America and Africa. Hogan Lovells is a recognized leader in investigations and fraud work, being ranked in the top tier of leading legal directories.

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