



# How do companies navigate bribery and corruption?

2015 Anti-Bribery and Corruption Benchmarking Report

A collaboration between Kroll and Compliance Week



### Table of Contents

pg 4

Executive Summary

pg C

**Risks** 

pg **14** 

Third Parties and Due Diligence

<sup>pg</sup>20

Effectiveness and Automation

<sup>pg</sup>24

What Compliance Officers Are Saying pg **2**6

Methodology

pg **27** 

Kroll Contributors

<sup>pg</sup>28

About Kroll/ Compliance Week

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Welcome to the 2015 Anti-Bribery and Corruption Benchmarking Report ("ABC Report"), a joint effort between Kroll and Compliance Week. Here we strive to give compliance professionals insight into one of the most important issues they face: effective programs to root out bribery and corruption. The modern global enterprise faces a more demanding regulatory environment than ever before, as well as more risks of bribery and corruption than ever before - and compliance officers must address both those concerns amid a relentless pressure to be as cost-effective and efficient as possible. The goal of this report is to help compliance officers accomplish exactly that.

First launched in 2011, the ABC Report aims to give compliance officers a comprehensive view of the types of "ABC" (anti-bribery and corruption) risks they face, the resources available to fight them and how those resources can be implemented into compliance programs. We began this specific report in the depths of winter, creating a 30-question survey for companies globally that explored a wide range of issues confronting ABC programs today. Those 30 questions were grouped into three broad categories: the resources and authority compliance officers have to address ABC risks; the nature of what those risks are; and the due diligence and compliance programs businesses put in place to mitigate them. We also included two free-response questions to let survey-takers express their thoughts more directly.

We then asked compliance executives worldwide to complete the Anti-Bribery and Corruption Benchmarking survey. Nearly 250 responded, and participants hailed from all manner of industry, including financial services, industrial manufacturing, business services and insurance. Their companies had average annual revenue of \$11.8 billion and on average more than 22,000 employees — in other words, the true voices of modern, global business. Their answers gave us the raw material to understand ABC risks and compliance programs today, and we're grateful for their invaluable input.

While we started with three categories of questions, we actually ended up with four categories of insight: risks, third parties, due diligence efforts and program effectiveness. In this supplement, you'll find an executive summary of the results on pages 4-7 and then snapshots of select findings from each of those four categories, plus more context on our methodology and how you can put these survey findings to good use at your own organization.

We hope you find the information here useful and that it can serve as a guidepost for your efforts to understand how corporate compliance works best in your company.

> Matt Kelly, Editor and Publisher, Compliance Week Lonnie Keene, Managing Director, Compliance, Kroll

"At the end of the day you want to know who you're in business with."

Lonnie Keene Managing Director, Kroll

# **Executive Summary**



The good news in the 2015 Anti-Bribery and Corruption Benchmarking Report ("ABC Report") is that many risks seem to have plateaued. That is, the answers to a wide range of questions on risks and anti-bribery practices this year are relatively similar to the answers provided in prior years. The bad news is that those answers still paint a frustrating picture of compliance officers' struggles to implement a global strategy for anti-bribery compliance and to tame vendor/third-party risks.

- Roughly half of all compliance officers surveyed expect their bribery and corruption risks to increase in the coming year, primarily due to their companies expanding into new markets or engaging more third parties. Another 29 percent expect their risks to remain steady. Both figures are within 1 point of 2014's numbers.
- Third-party relationships continue to be a serious risk and a heavy burden on compliance programs. Only 27 percent of survey respondents say that they train their third parties at least once a year on anti-bribery and corruption; 24 percent train third parties less often than that; and 48 percent never train on anti-bribery and corruption issues.

 However, the percentage of companies that employ due diligence procedures to hire/retain a third party are better: only 8 percent perform no due diligence at all, and most companies seem to employ risk-based factors when deciding how much diligence to perform on any specific business partner.

Much of the data suggests an emerging consensus on the anti-bribery risks that the chief compliance officer ("CCO") must oversee — that is, a certain set of common practices to manage anti-corruption compliance, if not necessarily best practices quite yet. Anti-corruption compliance overall remains a large, complicated task for CCOs. Even as the push for more automation continues, implementing even a basic level of automation still eludes many.

### Practices and Procedures

The majority of CCOs now say their anti-bribery policies are formal, written documents, usually embedded in the company's Code of Conduct, and distributed to employees who must then certify that they have read and understand the policies. Two-thirds of respondents say that they review their anti-bribery processes at least annually (10 percent say they review quarterly), and nearly 90 percent are aware of local anti-bribery statutes in various markets where they operate. All these numbers are either similar to, or exceed, the answers from our 2014 survey.

Fifteen percent of respondents have low confidence in their organization's financial controls to catch books-and-records violations of the Foreign Corrupt Practices Act ("FCPA"), and another 36 percent have only middling confidence in their controls. The single biggest reason for worry is "poor reporting relationships or collaboration," where finance department employees would know to bring concerns about possible improper payments to the compliance officer. This is the first year the ABC Report has asked about the books-and-records portion of the FCPA, and we look forward to putting further context around this question over time.

### Third Parties

As one would expect in today's highly interdependent business environment, almost every survey respondent (92 percent) depends on outside vendors and other third parties to some extent. The average respondent this year reports more than 2,900 third-party relationships.

Due diligence and "onboarding" of third parties is the brighter part of the picture (with anti-bribery training and ongoing monitoring of third parties, which we will discuss presently, less so). Only 8 percent of respondents perform no due diligence on third parties at all. The vast majority employ a variety of tactics to assess the integrity of their third parties and seem to use risk-based factors to decide the appropriate amount of diligence each party deserves. Fifty-eight percent rate their due diligence procedures as either effective or very effective.

However, the ongoing care and monitoring of third parties after a business relationship begins is seemingly more problematic. Forty-eight percent of respondents say that they never train third parties on anti-bribery and corruption concerns — down 10 points from the 58.3 percent figure from 2014, but still alarmingly high given the large number of enforcement actions regulators take that involve third parties somehow.







Those companies that do provide ABC training to third parties typically use numerous tactics to deliver those messages, and 74 percent say that the training is provided in local languages. Still, barely one-third of respondents rate their training as effective or very effective, and even fewer say the same about their efforts to audit anti-corruption risks among their third parties.

The number of companies automating at least some part of their anti-bribery compliance program continues to grow, from 49 percent last year to 66 percent this year. That said, the compliance program elements automated most often are training-related: 50 percent for training domestic employees, 41 percent for training overseas employees. This is in step with other surveys of compliance functions generally (beyond anti-bribery and corruption), which find that training is one of the most commonly automated and outsourced tasks a CCO oversees. Other elements of anti-corruption compliance (vetting third parties, training third parties, tracking payments through subsidiaries) are all automated much less frequently.

Companies "are not taking advantage of the solutions that are out there to the extent that they probably could, and frankly should be expected to, based on potential regulatory scrutiny."

Robert Huff Managing Director, Kroll

### Risks



The 2015 ABC Report began by asking respondents to identify what they considered to be the type of "corrupt behavior" the CCO must guard against. The primary answers are the same as last year — bribery, money laundering, bid-rigging and price fixing — and at almost the same percentages as reported in the 2014 report as well. (See chart on page 10 for specific results.) Trailing further behind "the big four" corruption risks are conflict minerals (27 percent) and human trafficking (26 percent), which are also quite similar to the 2014 results.

Of course, the CCO should play a crucial role in fighting all corruption risks. But, one first question might be whether those risks pose different types of compliance challenges — that is, whether a program to fight human trafficking might require a wholly different set of policies and controls than a program to fight bribery. That may happen to some extent, although the fundamentals will remain the same: know your business partner, perform effective due diligence, train those acting on your behalf and use technology to make the process efficient.

"Due diligence is really one of the keys to any type of compliance program, whether related to conflict minerals, anti-bribery and corruption, or anti-money laundering. It is one of those elements that cuts across all of those obligations," says Lonnie Keene, managing director with Kroll.

Many of the results in this year's survey stayed flat or relatively flat compared with last year's results, including how companies manage their bribery risk; whether their anti-bribery policy is a discrete, documented process (41 percent) or part of a broader policy addressing various compliance risks (38 percent); whether written ABC policies are baked into the Code of Conduct (74 percent); and the frequency of risk assessments (67 percent at least annually). The consistency in the results raises the question of whether compliance programs are hitting a maturation point with generally accepted standards or whether companies are complacent about their ABC risks. The answer? Perhaps a bit of both.

"Given the emphasis from regulators and law enforcement over the past year, one would expect to have seen a ramp-up in activity and program maturation far more than what the current survey results show," Keene says. "The larger entities that have been in the regulatory crosshairs, or that have had actual sanctions or enforcement actions against them, clearly are putting massive resources into their compliance programs, but others probably still find the internal dialogue for increased resources to be a challenge."

Kevin Braine, managing director with Kroll's Compliance practice in Europe, the Middle East and Africa, takes this one step further. "There is a little bit of anti-bribery and anti-corruption fatigue at the board level across large organizations," Braine says. In 2009 and 2010, lawyers and regulators predicted doomsday scenarios, bolstered by an explosion in the growth of formal investigations and fines imposed. That uptick leveled off in recent years. leading some companies to believe they have more time to get their houses in order.

Another reason the results have stayed relatively stable, Braine says, is that by 2015, "very few organizations out there now are not aware of the reputational and financial risk that their organizations can incur if they fail to comply with anti-bribery and anti-corruption regulation."

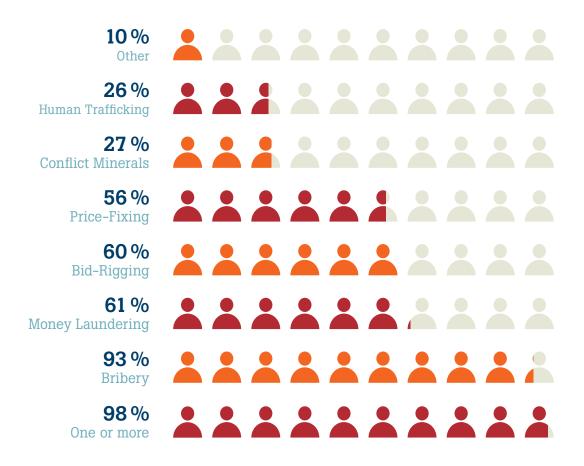
For the first time, this year's ABC Report also asked compliance officers about their confidence in their companies' financial controls to catch books-andrecords violations of the FCPA. While 48 percent are very confident or confident in those controls, that leaves more than half feeling less than confident. Among that group, the most common reason cited (71 percent) is poor reporting relationships or collaboration, where finance department employees might not know to bring concerns about improper payments to the compliance officer.

"Compliance needs to be working hand-in-hand with finance to understand practically how controls can be implemented, how the financial controls work and therefore how they potentially can be manipulated," says Zoë Newman, managing director for financial investigations at Kroll. Oftentimes, companies "have wonderful controls in their shiny glossy headquarters" and no understanding of an acquired subsidiary on a legacy financial system that cannot communicate to the head office systems, Newman adds.

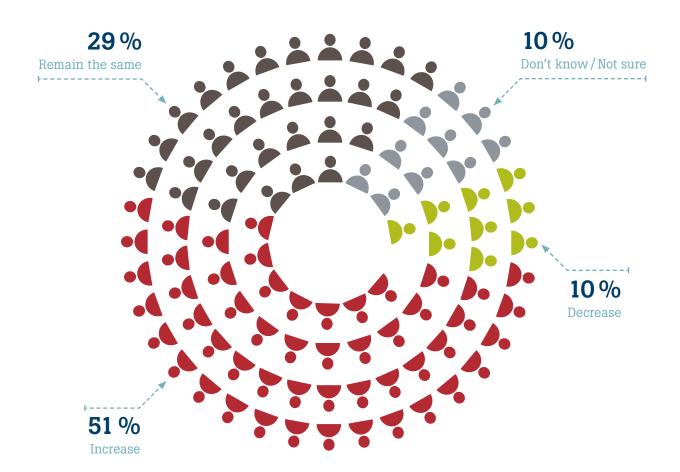
Robert Huff, a managing director with Kroll, agrees that better collaboration is required between the compliance and finance teams to know when red flags should be raised. CCOs need to facilitate closer cooperation and not treat books and records as a separate concern. (Multiple recent enforcement actions from the Securities and Exchange Commission targeting books and records underscore that point.)

"The focus frequently follows the perception of regulatory enforcement, which often has been that the failure to perform adequate third-party due diligence is a separate concern from books-and-records oversight," Huff says. "However, recent enforcement actions focused on books and records make clear that when it comes to scrutinizing payments made to third parties, both compliance and finance cannot work independently of each other."

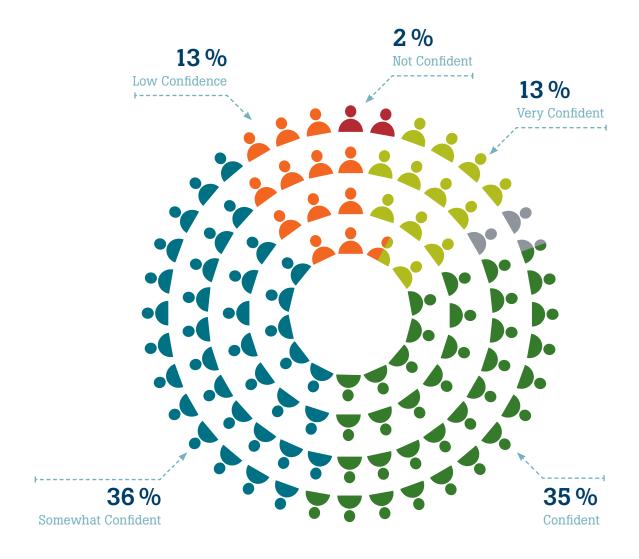
Exactly what types of misconduct does your company label "corruption" that the chief compliance officer is responsible for policing?



Do you anticipate the bribery and corruption risks to your company will increase, remain the same or decrease over the next two to three years?



How confident are you in your financial controls to catch potential books-and-records violations of the FCPA?



"Compliance needs to be working hand-in-hand with finance to understand practically how controls can be implemented, how the financial controls work and therefore how they potentially can be manipulated."

# Third Parties and Due Diligence



Respondents who admit they never train third parties on their anti-bribery policies fell from 58 percent last year to 48 percent this year. That's the good news. The bad news is 48 percent still are not training their third parties — an alarmingly high number considering how often third parties figure into FCPA or other anticorruption enforcement.

"It's a concern in this day and age that this number still exists," says David Holley, a senior managing director with Kroll. Holley wonders whether that 48 percent is somewhat driven by the sheer volume of third parties most companies use; more than one-fifth of this year's respondents report upwards of 5,000 third parties.

"Trying to conduct due diligence on a large number of third parties with whom you are doing business on a regular basis is like trying to change out the engine of a moving car," Holley says. "It's a daunting proposition, and one that companies may avoid because of the logistics and difficulties involved."

Still, if a company can send invoices or other materials to its third parties, the company should be able to send its Code of Conduct as well and ask those parties to certify to it, he adds.

Companies have improved at spreading anti-bribery and corruption awareness to their workforce; 66 percent report they train employees annually on ABC issues. The percentage reporting annual training for third parties rose from 2014, but still hit only 27 percent. The mechanisms used to train both groups are similar, but companies tend to rely on self-certification for third parties rather than in-person training, which is more common for employees. (See chart on page 17 for specific details.)

"While there has been phenomenal progress in the extent to which anti-bribery and anti-corruption issues have now made it on the training agenda for most large organizations, that's still not really the case when it comes to training third parties," says Braine.

Companies may be reluctant to spend money and time to push training to third parties because they suspect they will not get much enthusiasm from third parties, who may view it as one more compliance exercise. But just as self-certification has become a precondition for engaging a third party, participation in training should become "a second distinct precondition for moving a contract forward," Braine says. "That would be the only thing to motivate third parties to start taking this a bit more seriously, therefore it also motivates large corporates to actually spend time and effort in rolling these things out."

Only 8 percent of those surveyed admit they do not perform any due diligence on third parties. For the rest of the respondents, the survey reveals numerous ways companies go about their efforts, from formal contracts to information collected by the business unit to professional investigations. Companies also seem to be using more of a risk-based approach to decide how much due diligence to perform, considering factors such as how much a third party will interact with foreign officials, the nature of the work to be performed and where the third party is based.

Newman believes due diligence on third parties is becoming more proactive, digging deeper into higher-risk relationships.

"Five years ago one saw very few compliance officers or legal counsel doing any kind of proactive work, i.e., looking for potential problems and dealing with them in advance. Nowadays we're finding it being done more and more," Newman says.

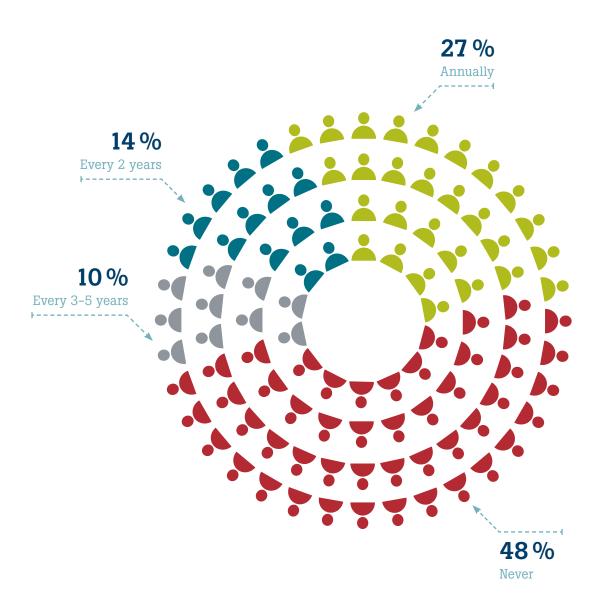
Another tendency is to not undertake due diligence after inheriting a large population of third parties from an acquisition, or at least to delay the process until contract renewal. That reluctance can be true even for companies with very strong processes in place for their existing third parties, according to Huff.

"People may think that a third party's longstanding relationship with the acquired company will carry the day for a while. That clearly is a gamble which likely will come up short under regulatory scrutiny," Huff says.

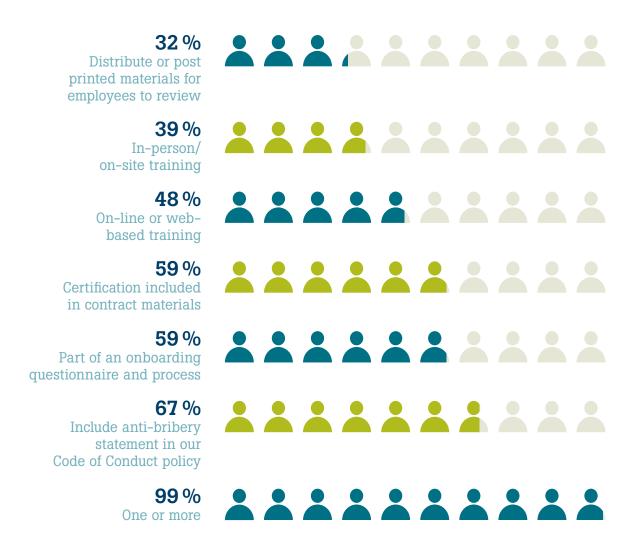
Respondents to the survey cite a host of reasons why a third party wouldn't measure up to their companies' compliance standards. Topping the list are general reputational or integrity concerns, followed by the need for clear-cut evidence of bribes in past business dealings — the same results as last year. Huff cautions that documented evidence is always better to hang your hat on rather than a third party's reputation or unvetted referrals. A troubled history often is the most reliable indicator of future problems, he says.

"At the end of the day, there's more to satisfying compliance requirements than that gut feeling, and being able to document and provide evidence of particular past issues is going to go a long way toward meeting those regulatory expectations," Huff adds.

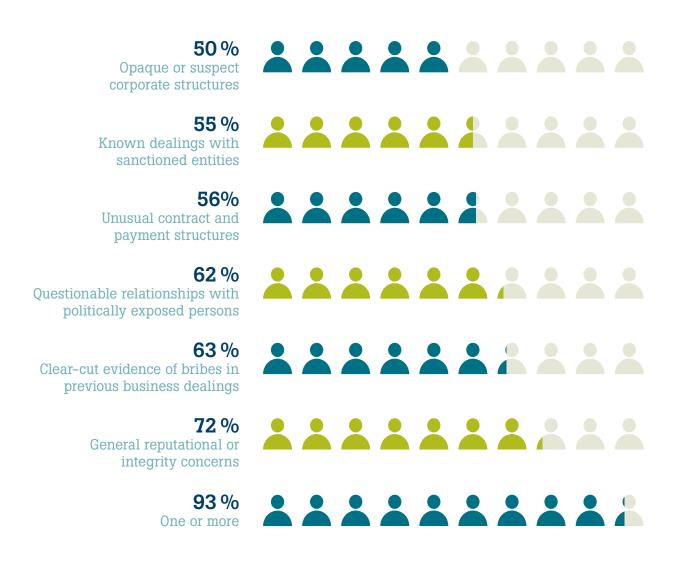
# How frequently do you train your third parties on anti-bribery and corruption?



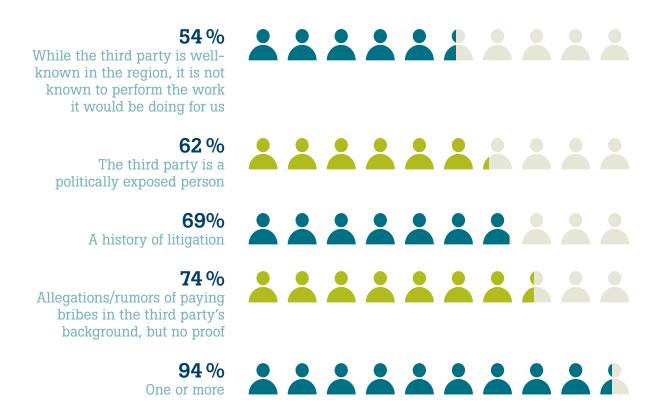
### How do you educate your third parties on anti-bribery and corruption?



Which are the most common reasons that potential third parties fail to meet your standards for anti-bribery compliance?



### Which factors would influence your decision not to work with a particular third party?



"Trying to conduct due diligence on a large number of third parties with whom you are doing business on a regular basis is like trying to change out the engine of a moving car."

David Holley Senior Managing Director, Kroll

### Effectiveness and Automation



The confidence levels that compliance officers have in the effectiveness of their anti-corruption programs follow a pattern in 2015 similar to what we have seen in years prior: the closer the risk is to main headquarters and the CCO, the more confident the CCO is in the compliance program's ability to mitigate it. The further away the risk, the confidence in effectiveness wanes.

For example: 69 percent of respondents rate their training of domestic employees as effective or very effective: for overseas employees the number drops to 56 percent; and for third parties the number is only 34 percent (assuming they are trained at all). We see a similar pattern for managing third-party risks: 58 percent of respondents are confident or very confident of their ability to perform due diligence at the start of a third-party engagement, but only 33 percent feel as confident about monitoring third parties after the business relationship is underway.

Given that managing third parties is so difficult (because companies have so many of them, and they can come and go from a company's operations so quickly), leveraging technology and automation of anti-bribery and corruption programs is one logical way to ease the sheer volume of work CCOs face while mitigating ABC risks. "It helps companies manage headcounts and thereby better manage scarce resources for compliance programs," Keene says.

Two-thirds of respondents say that they automate at least some part of their ABC compliance efforts, with training of domestic employees cited most often (50 percent) and training of overseas employees in second place (41 percent). After those two, however, the numbers drop rapidly, to only 26 percent for vetting third parties and then lower still for other tasks. (See chart on page 23 for specific details.) 29 percent of respondents do not automate any of their anti-corruption compliance efforts at all.

Companies "are not taking advantage of the solutions that are out there to the extent that they probably could, and frankly should be expected to, based on potential regulatory scrutiny," says Huff. For example, while the Justice Department has made clear in its guidance that monitoring of third parties is expected, only 15 percent use automation to do so. (Meanwhile, 60 percent rate their monitoring efforts overall as either somewhat or not at all effective.)

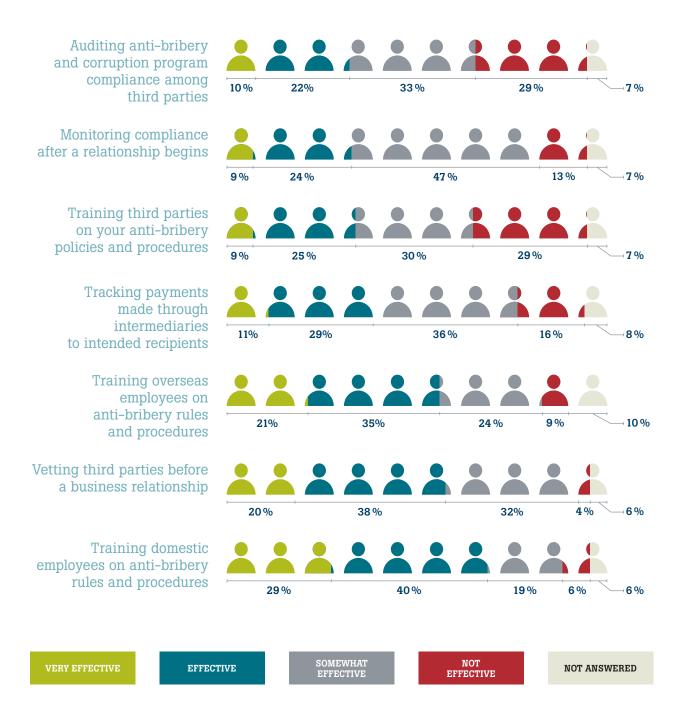
"It's a lot to ask of a company or a compliance department to tackle that manually," Huff says, citing the herculean task of monitoring adverse media, watch lists, sanctions regimes and litigation, in all local languages anywhere a company does business. "That's an area where the tools that are out there right now allow for large volumes of third parties to be regularly screened — it can be continuous daily screening or something less frequent, such as quarterly or semi-annually."

Other aspects of an effective program, such as tracking payments made through intermediaries, lend themselves to automation. The technology can flag abnormalities, assess risk through calibrated responses to questionnaires, route the information to appropriate executives for decision-making, and perhaps most importantly, prove a company has fulfilled its monitoring obligations if regulators come knocking.

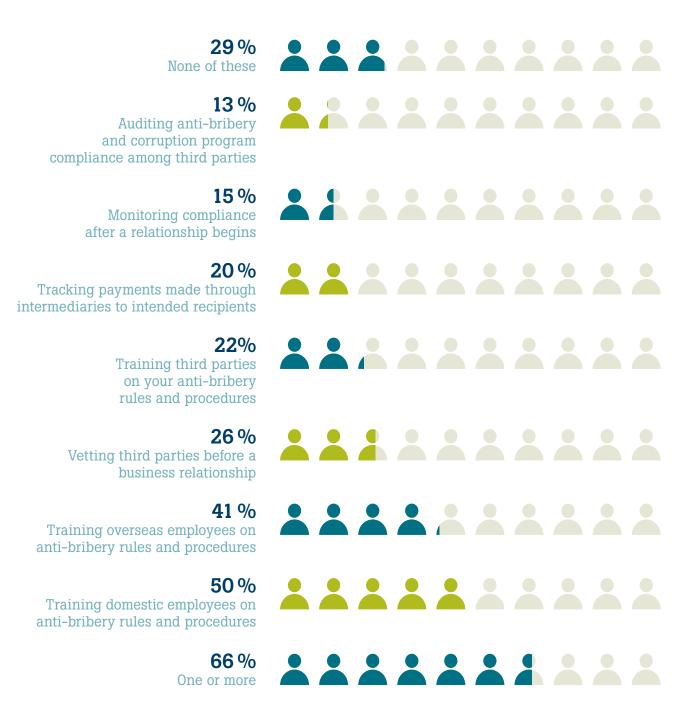
Sophisticated data analytics tools can help companies tame their risks by flagging high-risk transactions or relationships before a call to the whistleblower line occurs, says Newman. "The problem is that people want an off-the-shelf program they can apply and then tick the box," she says. "That's where it often fails. What will be a high-risk transaction in one company will be perfectly normal in another, so you have to do that initial bit of consulting work to make it an actually worthwhile exercise."

Huff agrees that not all tasks can be automated. Compliance professionals must craft questionnaires and set risk parameters, and ultimately make decisions about what to do with any red flags. How a company configures its automated systems will evolve over time as awareness grows of what gets flagged and the noncompliant get more clever about how to avoid controls.

### How effective do you believe your company's protocols and procedures are for...?



### Which parts of your anti-bribery compliance program do you automate?



### What compliance officers are saying:

How has the compliance function's focus changed at your company in the last 12 months?

"We are implementing an automated third-party due diligence system for the upcoming year and increased profile of the COBC and awareness of the Code across the entire organization."

"We base our program on the risks identified through the bribery risk assessment process. We have enhanced training, improved documentation of the risk assessment process and this year, our focus will be on enhancing monitoring."

"Developed an independent compliance department whose charter is to develop the anti-bribery and anti-corruption program globally. Nearly everything is new."

"More focus on in-person training. Establishing network of trainers throughout company who can assist in the in-person training efforts."

"Compliance focus has remained the same. We are introducing ABC training for agents, requiring refresher questionnaires for developing risk profiling on existing key suppliers and agents, and on-site ABC training and local risk challenges for newer Asia-Pac teams."

"Requesting thirdparty reports more often." "Brazilian authorities have issued an anti-bribery regulation in the last 12 months, so the company had to structure a compliance program to be compliant with the new regulation."

"More external access and visibility. For example, we have posted our Zero Tolerance for Bribery, Corruption and Money-Laundering Policy on our external website. We also have done so for our supplier and business partner codes of conduct and incorporated our policy above into them, as well as anti-bribery laws and anti-bribery corruption principles of the UN Global Compact."

"New dedicated compliance staff abroad gives us a closer look and more access to higher risk commercial transactions."

"With intermediary due diligence of third parties now ingrained in our process and part of standard operating procedures, we are focusing more efforts on working with our businesses on their procedures for registering and tracking incoming and outgoing gifts and entertainment."

"New deployment of code of ethics and launch of e-learning site focused on ethics." "The control framework has reinforced its focus on anti-bribery and we as affiliate have to fully implement the anti-bribery due diligence control in 2015."

"Greater emphasis on audit of control systems. Decreased use of agents/consultants with SOE in high-risk geography."

"There is more transparency among the different compliance groups and an increased focus on how we interact with each other (how our different pieces make up the whole of our compliance program)."

"Focus on due diligence remains strong. We added new policies like antitrust and know your customer."

"Huge movement to get current in all areas of compliance. At the beginning stages of pushing out a program to all employees and 3rd parties." "More focus on third-party due diligence and engagement with legal and procurement to assist in the process." How does the current trend toward increasing enforcement of anti-bribery and corruption laws by governments around the world affect your business plans for global expansion?

"We have a Global Code of Conduct, required for all of the territories in which we conduct business. The local codes of conduct may go further, but no less, than the Global Code."

"We have to be vigilant in how the company works with the government."

"The immediate impact is the need to increase due diligence even more. For example, in our business a better M&A procedure." "We currently have no strategic plans to expand our operations outside the U.S., but our industry is in a stage of consolidation so the strategic plan could change."

"Greater awareness — more research in advance better planning."

"We see it as a good thing, as now the international locations seem much more focused on bribery prevention and understanding the implications for our businesses."

"Undermines the need for robust anti-corruption due diligence in all M&A and new market decisions." "We now move much more cautiously."

"We need to be more proactive in our compliance matters. We know that the agencies are more active."

"Results in greater compliance investment to support business initiatives."

"It doesn't affect our business plans; it affects the focus of our anti-corruption program."

"We really need to figure out a way to automate some of the manual processes."

"Transparency remains key for our expansion and we blacklist countries that are known for a lack of it."

"Causing us to think more carefully about building in controls in high-risk countries, increase thirdparty training in high-risk countries."

"Provides support for exercising caution and undertaking more due diligence."

"It adds an additional level of checks and controls at the beginning and throughout the lifetime of a relationship."

"Increased emphasis on awareness, particularly of business executives."



The Compliance Week – Kroll Anti-Bribery and Corruption Benchmarking survey was drafted by senior Compliance Week editors and Kroll partners in January, and then pushed out to an audience of senior-level corporate compliance officers worldwide from Feb. 25 to April 6.

The survey produced 252 responses. Any submission where the respondent's title was not directly related to corporate activities (partner or administrative assistant, for example) was excluded from the data analysis. The result was 242 qualified responses from senior-level executives working in ethics, compliance or anti-corruption somehow. Of those 242 respondents, 23 percent held the title of chief ethics & compliance officer, followed by director of FCPA compliance (12 percent) and chief audit executive (9 percent). A wide range of other titles then trailed behind, all of them related to compliance or anti-corruption activities.

The survey also went to a wide range of industries. Of the 242 qualified responses, the single largest industry group was financial services (18 percent), followed by industrial manufacturing (7 percent) and then business services and insurance (5 percent each). Several dozen industries were represented in the data pool.

Average revenue of the 242 qualified respondents was \$11.8 billion; average worldwide employee headcount was 22,600.

This was a self-reported survey from Compliance Week's audience of ethics and compliance professionals, and Compliance Week did not attempt to verify or audit the data reported by survey-takers.

### **Kroll Contributors**



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Lonnie is a leading authority in compliance matters, with significant experience in anti-money laundering, government sanctions programs (OFAC) and Foreign Corrupt Practices Act compliance programs. He has over 15 years of directly relevant experience as a chief compliance officer, associate general counsel, practicing attorney and a court-appointed AML monitor.

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Kevin has managed numerous anti-bribery and anti-corruption programs for a wide range of financial and corporate clients. He also has extensive experience advising clients (including many in the FTSE 100) in areas such as pre-transaction due diligence, hostile M&A support activities, third-party agent screening, and market and competitor intelligence gathering.

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### Zoë Newman, Managing Director

Zoë specializes in financial investigations, in particular those involving fraud, corruption and regulatory breaches, including FCPA and UK Bribery Act matters. Her investigative expertise spans forensic accounting, data analysis and asset tracing across complex corporate structures and multiple jurisdictions, such as the Commonwealth of Independent States (CIS), the Middle East and China.



#### Robert Huff, Managing Director

Robert has more than two decades of expertise within compliance and investigations. He has managed hundreds of civil and criminal investigations, including due diligence matters, both domestically and internationally, and has led numerous complex internal investigations involving embezzlement, kickbacks, intellectual property theft, commercial bribery, harassment, threats and litigation support matters.

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David has directed a wide variety of complex assignments spanning such diverse matters as proxy fights and hostile takeovers, major fraud investigations, internal investigations and due diligence. He also consults with clients on best practices for compliance with the FCPA, BSA/AML money laundering rules and other regulatory regimes.

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