

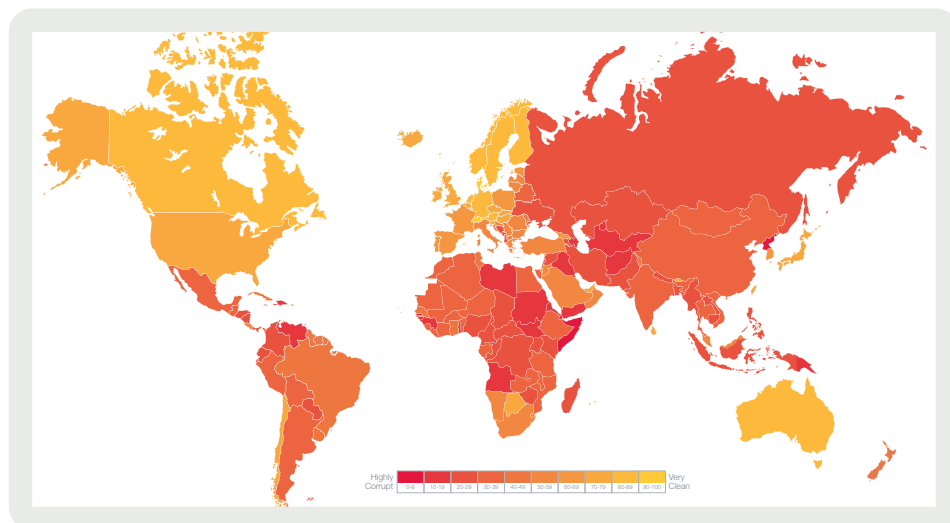


Global Compliance Solutions

Corruption around the globe

A landscape that continues to change

Most companies are well aware of the risks bribery and corruption pose when operating in the global marketplace. However, what companies may be overlooking is how quickly the landscape is changing—and how this dynamic shift can affect corporate compliance initiatives.



Source: Corruption Perceptions Index 2014. Transparency International. December 2014.

According to the recent Global Corruption Index by Transparency International, 69% of countries scored below 50 within a range of 0 to 100.¹ This demonstrates a high perception of corruption across more than two-thirds of the 175 countries and territories measured in the survey.

Following a series of enforcement actions across the US and UK, it is increasingly clear that bribery charges and corruption violations lead to a decline in corporate reputations. In the case of multiple actions, the continual cycle of unethical behavior emphasizes a problem that runs to the core of many organizations. This does not escape the notice of consumers, competitors, and other businesses in the supply chain of a company. Competition is fierce, and despite the uptick in enforcement, some businesses, employees, and third-party intermediaries are willing to cross the line to gain an advantage.

¹ Corruption Perceptions Index. Transparency International 2014.

² Global Corruption Barometer 2013. Deborah Hardoon and Finn Heinrich. Transparency International. July, 2013.

Bribery is widespread



MORE THAN 1 IN 4
PEOPLE AROUND THE
WORLD REPORT HAVING
PAID A BRIBE.²



MORE THAN 1 IN 2
PEOPLE THINK THE
GOVERNMENT IS RUN BY
GROUPS ACTING IN THEIR
OWN INTERESTS.²



THERE ARE 14 COUNTRIES
WHERE **MORE THAN**
HALF OF THE PEOPLE
REPORT HAVING PAID
A BRIBE.²

An increasing pursuit; a stronger focus on corruption

In an article published by the U.S. Department of Justice (DOJ), General Lanny A. Bruer noted the focus the DOJ will maintain around fighting corruption:

“As a result of our efforts over the past three-and-a-half years, robust FCPA enforcement has become part of the fabric of the Justice Department: Our global anti-corruption mission has seeped into the Criminal Division’s core. And there is no turning back. The FCPA is now a reality that companies know they must live with and adjust to; and this nation is better off for it.”

He then goes on to say, “The United States [is] in a unique position to spread the gospel of anti-corruption, because there is no country that enforces its anti-bribery laws more vigorously than we do.”³

According to the Wall Street Journal, the DOJ and FBI have increased head count to support the rising number of corruption investigations. With the number of agents increasing, the priority on foreign bribery efforts has never been stronger. “With the growing global economy and the growing nature of international commerce with globalization of more companies and economies, it’s creating more opportunities for the potential of FCPA and corruption,” said Joseph Campbell, assistant director of the Criminal Division of the FBI.⁴

How does this affect the current landscape? With rising enforcement activity across the globe and new anti-corruption laws being passed in an increasing number of jurisdictions, attention to preventing and prosecuting bribery and corruption activities has never been more intense.

Global changes are expanding the fight against corruption

On the global stage, the US and UK have largely set the tone for enforcement. However, more and more nations are joining the fight.

For example, Ireland is due to enact a sweeping anti-bribery law in 2015, similar to those already in place in the UK and US. In a recent article by Kenan Furlong and Kerrie Glynn

of the law firm A&L Goodbody, “[Ireland’s] new laws will place an onus on businesses to take a range of anti-bribery measures, including the adoption of anti-bribery policies.”⁵

While the full wording of the new bill has yet to be released, it is expected to “have significant implications for businesses in Ireland and particularly those operating in developing economies.”

In fact, a draft of the bill “refers to businesses taking ‘all reasonable steps’ and performing ‘all due diligence’ in order to avail of the corporate defense.” According to Furlong and Glynn, this will arguably set an even higher standard than the requirement in the UK Bribery Act.⁶

In another example of evolving regulations, the Canadian government has indicated it is considering modifying its already strict anticorruption rule by adding further repercussions for organizations that violate the law. Under the proposed rule, companies looking to do business with the Canadian government would be required to certify that it has not been charged with certain crimes, including bribery, anywhere in the world over the past 10 years. In its present form, the rule would not permit companies to seek exception to debarment based on remediation or other “good behavior.”

While enforcement efforts continue to build momentum globally, with new laws enacted—the emphasis on corruption continues to be top of mind. This is a strong reminder to the importance for businesses to have a solid compliance program in place that defines a policy against corrupt behaviors.⁷

Increased prosecution is delivering record fines

Corruption continues to inject itself across many matters of business transactions, a company found guilty of violations can be exposed to significant damages.

An example of this can be seen in recent headlines—a French power and transportation company pleaded guilty and agreed to pay a \$772 million criminal penalty to resolve bribery allegations. This marked the highest-ever criminal

^{3,4} Assistant Attorney General Lanny A. Bruer Speaks at the American Conference Institutes 28th National Conference on the FCPA by Assistant Attorney General Lanny A. Bruer. Department of Justice. November 2012.

^{5,6} Preparing your business for Ireland’s impending anti-bribery laws. Kenan Furlong and Kerrie Glynn. Lexology. January 15, 2015.

⁷ Coalition pushes to delay Ottawa’s corruption rules by Barrie McKenna. The Globe and Mail. November 2014.

fine levied by the United States against a company for violations of foreign bribery laws. FBI Executive Assistant Director Anderson remarked, “The record dollar amount of the fine is a clear deterrent to companies who would engage in foreign bribery, but an even better deterrent is that we are sending executives who commit these crimes to prison”.⁸

China also recently imposed a fine of nearly \$500 million on a British pharmaceutical company for bribery and levied a \$40.5 million fine on an automotive company for violating antitrust laws.⁹

Though the need for a proactive effort to address corruption risk may seem obvious, the competing priorities faced by many organizations can result in inadequate measures. This is especially the case when compliance is not treated as a central value to the business strategy of an organization and where a culture of lawfulness is not carefully reinforced.

A recent study from PWC asked the question, “Is compliance front and center?” One response was particularly telling: “Since I wear multiple hats,” the respondent stated, “it’s sometimes challenging to spend as much time on compliance-related activities as I would like. Our compliance challenges are important, but not always urgent, which means that they get ‘back-burnered’ on a regular basis.”¹⁰

Organizations in today’s changing landscape cannot afford to “back-burner” compliance priorities. Instead, the focus should be on continuous improvement. The tone at the top must infuse change, set expectations, and foster a mature environment. Though the complexities of a strong compliance program are not without challenge, organizations still must champion the importance of risk mitigation as it relates to the well-being of the company. This may require shifting responsibilities, or putting a stronger effort on ensuring the business is operating in accordance with best practices.

Unfortunately, the compliance function can be overlooked within an organization, especially when it requires a significant investment of time and resources. Compliance cannot always be monetized; the value of prevention not always recognized, or measured. So how do executives in an organization justify putting compliance training at the forefront? The answer is that if the leadership within an

organization isn’t taking affirmative steps to mitigate risk, then it is making an expensive gamble, waiting and hoping the company isn’t caught in the crosshairs of enforcement.

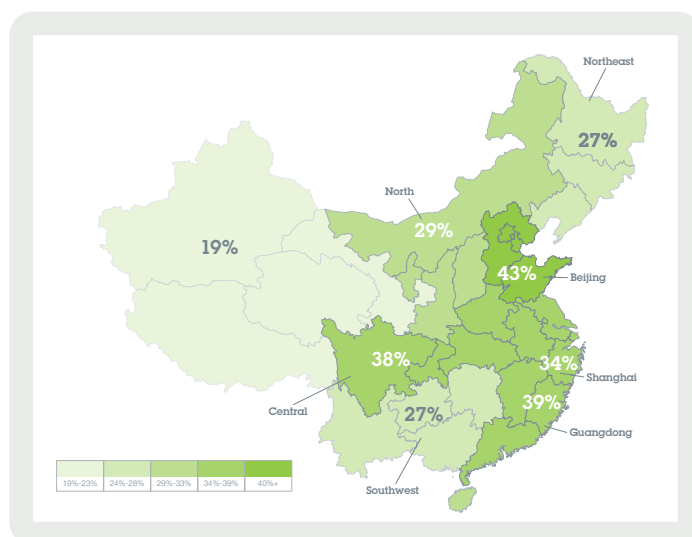
Compliance must be a priority

A corruption survey by KPMG Forensics of 103 executives from US-based multinational companies who identified themselves as having day-to-day responsibility for FCPA matters revealed:

82% of the respondents said they face difficulties performing effective due diligence of foreign agents and other third-parties.

76% said that auditing third parties for FCPA compliance is a significant challenge.¹¹

These statistics reveal that compliance has still not achieved its place as a core operational priority for some. As a result, organizations continue to struggle with avoidable risks. Take third-party management, which can prove complex and challenging even in the most favorable of circumstances. An organization must consider what unique risks may be present in regions where employees conduct business to fully understand the possibility for corruption. Operating in locations such as China, where the business culture can clash with Western views on bribery, certainly increases the risk of violations.



Source: Corruption Perceptions Index 2014. Transparency International. December 2014.

⁸ \$772 Million Criminal Penalty to Resolve Foreign Bribery Charges. Office of Public Affairs. Department of Justice. December 22, 2014.

⁹ China Fines Nearly \$500 Million in Bribery Case by Keith Bradsher and Chris Buckley. The New York Times. September 19, 2014.

^{10, 11} 2008 Anti-bribery and Anti-corruption Survey. KPMG Forensic. 2008.

In a study on the business climate in China, Charney Research found that 35% of the firms surveyed indicated that they have to “pay bribes or unofficial fees, or make gifts to operate.” The CFO of the privately-owned food processing company, whose firm has made such payments, described the practice as “an unspoken rule.”¹²

One key finding of the study was the chief reason offered for making corrupt payments was competitive pressure.¹³

What does it all mean?

With the potential for corruption, it is imperative that organizations are ahead of the curve. As prosecutors continue to prioritize exposing corruption, it's crucial that organizational leadership ensure compliance programs provide effective communication and training. Employee education through mandatory training is essential to preventing costly violations.

Mitigate risks effectively by enabling your business to educate employees, address potential threats, and infuse responsibility across the organization. Go beyond checking the box and integrate a compliance program within the business strategy where the focus sits with behavioral and cultural change.

^{12, 13} *Corruption in China: What Companies Need to Know*, by Craig Charney and Shehzad Qazi. Charney Research. January 21, 2015.



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