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Understanding Anti-Corruption Compliance

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cutting through complexity

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Despite Progress, Anti-Corruption Risks Continue

By Edith Orenstein

KPMG has released a report on anti-bribery and corruption programs that, at a high level, will surprise nobody: Compliance challenges are growing, and third parties are harder than ever to manage.

After nearly a decade of anti-corruption awareness and compliance programs, then, the real question is this: Why is anti-bribery still so hard?

The numbers from KPMG aren't exactly soothing: 77 percent of U.S. respondents described anti-corruption compliance as "highly challenging" this year, up from 43 percent in 2011. British respondents reported a similar spike, from 32 percent four years ago to 51 percent today. (Other key challenges cited in the survey are in the sidebar below.)

"I don't think companies have let their guard down," says Marc Miller, a partner in KPMG's forensic practice. "I think it's global enforcement stepping up. OECD reports would highlight that today some emerging countries are stepping up: We have China and Brazil leading their own initiatives and carrying out investigations; that has gotten the attention of the corporations that have these risks."

He adds, "I think the boardroom still considers ABC a top risk, as much as a business risk. Some may say it's their brand at risk, and they don't want to be associated with showing up in the newspaper for an alleged ABC violation."

One of the biggest challenges cited in the survey was third-party intermediaries. Violations can run the gamut from failure to perform contracted services to sham vendors to hiring a relative of a government official who would not

otherwise be hired. "It gets back to: Is there an exchange or offer ... and is it given to a government official? The creativity is endless," Miller says.

Eric Feldman, managing director at Affiliated Monitors, which serves as an independent monitor in deferred- and non-prosecution agreements, agrees that increased enforcement is the top reason companies feel more challenged. He calls it a new level of international cooperation,

"I don't think companies have let their guard down. I think it's global enforcement stepping up. OECD reports would highlight that today some emerging countries are stepping up."

Marc Miller, Partner, Forensic Practice, KPMG

something never seen before.

"Take a look at the whole FIFA mess," he said, where the U.S. Justice Department coordinated with law enforcement in Switzerland and elsewhere to arrest top soccer executives for accepting bribe for bids on hosting the World Cup. Such an investigation "never would have been able to take place a few years ago."

Third-party risks are so hard for businesses to manage, Feldman says, because there are so many types of risk to manage: high-risk countries, certainly; but also high-risk contracts, high-risk accounts, business expenses, engineering overhead, meals and entertainment, and many other places where bribes can be hidden away.

What's more, "If you're going to have a right-to-audit clause in contracts and sub-contracts, you darn well better exercise it," Feldman says. He notes that part of auditing is the deterrent effect; if you never exercise the right to audit at all, the deterrent effect goes away. Likewise, he warns against companies failing to follow up on allegations of improprieties, since that fuels employee cynicism about a company's commitment to good conduct.

Granted, an assessment of corruption risks can be the best way to identify where to put limited resources to improve or mitigate control weaknesses, and demonstrate your commitment to government agencies. Some compliance professionals, however, suspect that some companies still hesitate to undertake that exercise. The fear: that they identify a corruption risk but fail to follow up on it, which might put the company in a worse situation than if it had done nothing at all.

Joseph Spinelli, senior managing director at Kroll, cites Justice Department guidance (Opinion Release No. 08-02, to be precise) that says global organizations must rank risks according to high, medium, and low concerns. The guidance also discusses using technology-based tools. Those efforts, Spinelli says, can demonstrate to the Justice Department that you made a good-faith effort to perform due diligence even if you fail to catch a rogue third party

TOP ABC CHALLENGES

Below, KPMG ranks the top anti-bribery corruption challenges in 2015.

Rank	Challenge
1	Auditing third parties for compliance
2	Variations in country requirements: data privacy, etc.
3	Difficulty in conducting due diligence over foreign agents/third parties
4	Lack of internal resources
5	Difficulty in identifying & assessing risk
6	Cultural/language issues

Source: KPMG.

out there somewhere.

For those companies choosing not to do careful due diligence, including risk-based assessments, “My answer is, shame on you if you don’t,” Spinelli says. He says the expectations in Release No. 08-02 are clear: If you fail to do a technology-based due diligence and risk assessment ranking third parties, “I hope you have deep pockets.”

The other difficulty in compliance with the Foreign Corrupt Practices Act, Spinelli says, is understanding how emerging markets function and what their local customs are. “Dealing with India, China, other countries, you have to take into account all the things that are permissible there that would be violations of the FCPA statute. And companies doing business in foreign localities every day, don’t always know who is a foreign official is.”

He gives the example of a payment made by a company to an individual doctor working for a hospital in China, so the company can win an exclusive contract; hospitals are owned by the government, and doctors working in those hospitals qualify as foreign officials.

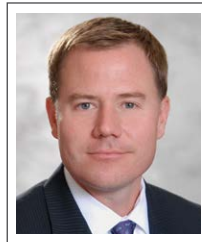
Recommendations

For anti-corruption training to succeed, Spinelli says, “Make them read it, and certify they understand it; you want to show the government—if it becomes an issue—you have taken steps proactively to address the problem.”

Feldman concurs that insufficient training programs, particularly for global businesses, can be a big challenge. Many rely on computer-based training out of necessity, he says, but they must follow up to insure the message is really understood by people in the head office as well as at the plant or production facility.

“One of [my first requests when] I go into a company is, ‘Show me what your performance appraisals look like, the

promotion and bonus criteria,’” Feldman says. He wants to check whether employees get mixed messages, that despite exhortations for good compliance, “all the company really cares about is financial performance ... what gets measured gets done, and I will achieve it, no matter what it takes—and sometimes no matter what it takes is unacceptable from an [anti-corruption] standpoint.”



Miller

Justice Department attorneys warn that some of the highest corruption risks reside in mergers and acquisitions, Miller says. “Every M&A transaction is different; there may be only so much you can do before closing, or so much access; but are you taking steps after closing, when you do have better access, to see where potential risks are?”

He adds that data analytics can be a useful tool, for tasks such as trying to find anomalous pricing data across a group of distributors. Even if no problem actually exists, good analytics can help a compliance officer understand training needs, the effectiveness of due diligence, or even whether an entity-level process or control needs reevaluation.

“The government has never been more aggressive,” Spinelli says. He strongly recommends being active, and notes that Britain’s Bribery Act provides a compliance defense if the company can demonstrate that it implemented adequate procedures. Here in the United States the FCPA does not allow a compliance defense, although the trend is that federal prosecutors do take into account whether the company took the initiative to design and implement a compliance program, including conducting due diligence with third parties. ■

ABC PROGRAM STRENGTHS, WEAKNESSES

KPMG conducted a worldwide online survey of corporate risk leaders to find out the strengths and weaknesses of their companies’ programs to combat bribery and corruption. There were 659 responses, the main findings from which are as follows:

- » There is a sharp increase in the proportion of respondents who say they are highly challenged by the issue of ABC compared with a survey KPMG conducted four years earlier.
- » As companies continue to globalize, management of third parties poses the greatest challenge in executing ABC programs.
- » Despite the difficulty of monitoring their business dealings with third parties, more than one third of the respondents do not formally identify high-risk third parties.
- » More than half of those respondents with right- to-audit clauses over third parties have not exercised the right.
- » BC considerations are accorded too low a priority by companies preparing to acquire, or merge with, other corporations across borders.
- » Respondents complain they lack the resources to manage ABC risk.
- » A top-down risk assessment would help companies set priorities, but executives admit that an ABC risk assessment is one of their companies’ top challenges.
- » Data analytics is an increasingly important and cost-effective tool to assess ABC controls. Yet only a quarter of respondents use data analysis to identify violations and, of those that do so, less than half continuously monitor data to spot potential violations.

Source: KPMG.

Blood Is Not Thicker Than FCPA Risk, Says SEC

By Thomas Fox
Compliance Week Columnist

In August the Securities and Exchange Commission announced a resolution with Bank of New York Mellon for violations of the Foreign Corrupt Practices Act. This was the first enforcement action around the now infamous “princess-lings and princelings” investigation, where U.S. companies hired the sons and daughters of foreign government officials to curry favor and obtain or retain business.

While JPMorgan Chase has garnered the most attention around this issue (probably because of its notorious spreadsheet tracking of sons and daughters hires to developed business in China), multiple U.S. companies are under scrutiny for similar conduct. Credit Suisse, Goldman Sachs, Morgan Stanley, Citigroup, and UBS are all under investigation by the SEC for their hiring practices around the sons and daughters of foreign government officials.

BNY Mellon simply has the honor of being the first company to reach resolution on this issue. As this was the first such enforcement action, it is something the compliance professional should be aware of and put appropriate risk management around this practice going forward.



The Facts

In its press release the SEC noted, “The Securities and Exchange Commission today announced that BNY Mellon has agreed to pay \$14.8 million to settle charges that it violated the Foreign Corrupt Practices Act by providing valuable student internships to family members of foreign government officials affiliated with a Middle Eastern sovereign wealth fund.” Andrew Ceresney, director of the SEC Enforcement Division, was quoted as stating, “The FCPA prohibits companies from improperly influencing foreign officials with ‘anything of value,’ and therefore cash payments, gifts, internships, or anything else used in corrupt attempts to win business can expose companies to an SEC enforcement action. BNY Mellon deserved significant sanction for providing valuable student internships to family members of foreign officials to influence their actions.”

Kara Brockmeyer, chief of the Enforcement Division’s FCPA Unit, said, “Financial services providers face unique corruption risks when seeking to win business in international markets, and we will continue to scrutinize industries that have not been vigilant about complying with the FCPA.”

The cease-and-desist order that was entered found that BNY Mellon violated the anti-bribery and internal controls provisions of the Securities Exchange Act. BNY Mellon—without admitting or denying the findings, as often happens—agreed to pay \$8.3 million in disgorgement, \$1.5 million in prejudgment interest, and a \$5 million penalty. The SEC went on to say that it “considered the company’s remedial acts and its cooperation with the investigation when determining a settlement.” Two foreign officials were

involved. The order specified Official X, who sought an internship position for his son and nephew; and Official Y who sought an internship position for his son.

The order recited clear evidence from the BNY Mellon officials involved that hiring the son and nephew of Official X was done to obtain or retain business. As reported in the order:

» BNY Mellon was “not in a position to reject the request from a commercial point of view” even though it was a “personal request” from Official X. The employee stated: “by not allowing the internships to take place, we potentially jeopardize our mandate with [the Middle Eastern Sovereign Wealth Fund].”

If any question remained about whether foreign sovereign wealth funds are covered under the FCPA, that answer is now clear: They are. All corporate actions must be cloaked with this knowledge going forward.

- » Another employee was quoted as saying, “I want more money for this. I expect more for this ... We’re doing [Official X] a favor.”
- » Yet another employee was quoted, “I am working on an expensive ‘favor’ for [Official X]—an internship for his son and cousin (don’t mention to him, as this is not official).”
- » Finally, to demonstrate the nefarious nature of the arrangement and lack of transparency in the entire process, this final BNY Mellon employee said, “[W]e have to be careful about this. This is more of a personal request ... [Official X] doesn’t want [the Middle Eastern Sovereign Wealth Fund] to know about it.” The same employee later directed his administrative assistant to refrain from sending e-mail correspondence concerning Official X’s internship request, “because it was a personal favor.”

The order also featured some equally damning communications that turned up at BNY Mellon about hiring Official Y’s son.

- » The BNY Mellon sovereign wealth fund relationship manager said that granting Official Y’s request was likely to “influence any future decisions taken within [the Middle Eastern Sovereign Wealth Fund].”

- » The same person also worried aloud that if BNY Mellon did not hire the son, it “might well lose market share to a competitor as a result.”
- » He went on to write “Its [sic] silly things like this that help influence who ends up with more assets/retaining dominant position.”
- » Finally, he noted that to accede to Official Y’s request was the “only way” to increase business share.

Sovereign Wealth Funds and FCPA

The underlying facts and BNY Mellon’s conduct provide some clear guidance for the chief compliance officer regarding what will be a violation of the FCPA in the hiring of sons, daughters, and close family relatives going forward. The first important lesson under this enforcement action is around the parties. Although not identified by country, the foreign governmental entity involved was a Middle Eastern Sovereign Wealth Fund. If any question remained about whether foreign sovereign wealth funds are covered under the FCPA, that answer is now clear: They are. All corporate actions must be cloaked with this knowledge going forward.

Nothing in the FCPA prohibits the hiring of a close family member of a foreign government official. What the FCPA does make illegal is an action where a company “or any officer, director, employee, or agent acting on behalf of such issuer, in order to obtain or retain business, from corruptly giving or authorizing the giving of, anything of value to any foreign official for the purposes of influencing the official or inducing the official to act in violation of his or her lawful duties, or to secure any improper advantage, or to induce a foreign official to use his influence with a foreign governmental instrumentality to influence any act or decision of such government or instrumentality.”

The actions of BNY Mellon were clearly designed not simply to curry favor with the foreign governmental officials involved, but also either to grow the business or to help to retain what the company already had in place with the un-named foreign Sovereign Wealth Fund. BNY Mellon offered high-value, high-prestige summer internship programs for “undergraduates as well as a separate summer program for post-graduates actively pursuing a Master of Business Administration (MBA) or similar degree. Admission to the BNY Mellon postgraduate internship program was highly competitive and characterized by stringent hiring standards,” according to the company.

The main purpose of these internships is to give BNY Mellon an opportunity to evaluate the interns as potential permanent hires to the company. There was a designated track for nomination to the internship program and internal company evaluation prior to offering candidates an intern position. In other words, there were policies and procedures around the process, and BNY Mellon did not follow them.

Lessons Going Forward

The obvious starting point for the hiring of a close family member of a foreign governmental official is whether the candidate is qualified for the position. If he or she is not,

that is a full stop. In the case of BNY Mellon, there was no evidence that any of the candidates had the academic background, academic credentials, leadership traits, or intangible skills to meet the bank’s normal internship hiring criteria.

But your risk management does not stop with the hiring process. If the foreign governmental official is the individual who asked for the hiring of the family member, this is definitely a red flag not to be overlooked. Your analysis needs to focus on the role of that foreign governmental official in awarding new business to your company or in retaining old business.

If the foreign governmental official has direct (or even strong indirect) control over such business relation, this may present such a clear conflict of interest that the risk cannot be managed. A good rule of thumb here is whether there is full transparency in the hiring with the foreign government involved with your company. In the case of BNY Mellon, the company did not want anyone in the Sovereign Wealth Fund to know BNY Mellon had hired the son or nephew. That is a clear sign transparency is lacking and someone, somewhere is engaging in unethical conduct, if not breaking the law.

Finally, if you do happen to decide to move forward and hire the close family member, you need to assign that new hire to work not associated with the business relationship between your company and the foreign government involved. It’s akin to third-party management: The ongoing relationship after a contract is inked is in many ways the most critical element; the same is true in the employment relationship involving close family members of foreign government officials.

Ultimately, you would need to have internal controls to ensure effective compliance going forward. You cannot have customer relationship managers making the calls on hiring that override the human resources procedures. Not only must HR be able to review the hires; you also need mechanisms to flag such hires for compliance review. Lastly, you need sufficient senior management oversight because this is such a high-risk proposition.

There may well be several such enforcement actions ahead. Companies are now on full notice of the risk and the need to manage this risk going forward. ■

Thomas Fox has practiced law in Houston for 30 years. He is now an independent consultant, assisting companies with FCPA and compliance issues. He was most recently the general counsel at Drilling Controls Inc., a worldwide oilfield manufacturing and service company. He was involved with compliance investigations, audits, and drafted policies, and he led training on all facets of compliance, including FCPA, export, anti-boycott, and commercial operations training. He was previously division counsel with Halliburton Energy Services Inc., where he supported Halliburton’s software division and its largest division, then named Drilling Formation and Evaluation Division, worldwide.

Fox has the award winning Blogsite, FCPA compliance and ethics blog, and podcast, “The FCPA Compliance and Ethics Report.” He has authored several books on compliance and ethics, including the bestseller, “Lessons Learned on Compliance and Ethics”; the award-winning “Best Practices Under the FCPA and Bribery and Bribery Act”; and the recently released “Anti-Bribery Leadership,” with Jon Rydberg. He also lectures nationally and internationally on anti-corruption and anti-bribery compliance programs.

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OECD: Foreign Bribery Enforcement Declining

Drop may be due to the longer time it takes to end foreign bribery cases

By Jaclyn Jaeger

As of year-end 2014, the number of sanctions brought against companies and individuals for the bribery of foreign government officials was on the decline, possibly because those cases were taking much longer to resolve, according to a groundbreaking report published by the Organization for Economic Co-operation and Development.

The *OECD Foreign Bribery Report* presents an analysis of all foreign bribery enforcement actions through 2014 that have been completed since the OECD Anti-Bribery Convention entered into force in 1999. It further details how bribes are paid, where they are paid, and to whom, as well as who is being sanctioned for bribery.

According to the report, a total of 42 foreign bribery cases concluded last year, compared to 43 in 2012. Those numbers are significantly lower than the record 78 foreign bribery cases resolved in 2011, and 68 cases resolved in 2010.

The sharp decline in enforcement actions compared to 2011 numbers may be explained by the fact that the average number of years to conclude foreign bribery cases has steadily increased over time. For example, it took an average of 7.3 years to conclude the 42 foreign bribery cases resolved last year, compared to 5.5 years and 4.3 years in 2012 and 2011, respectively. Almost half of all cases (46 percent) took between five to ten years to resolve.

"The fact that cases are taking longer to bring to a close could be attributable to a number of factors, including the time taken to lodge and hear appeals of convictions or acquittals in foreign bribery cases or increased sophistication of bribery techniques, requiring more resources and time-intensive investigations," the report stated. "This increase could also corroborate anecdotal evidence that companies and individuals are less willing to settle foreign bribery cases and that settlement procedures are taking longer as a result."

As of December 2013, 17 of the signatory countries have sanctioned 263 individuals and 164 companies for foreign bribery, bringing the total to 427 enforcement actions concluded from 1999 to June 2014. Additionally, 390 investigations are underway in 24 of the 41 parties to the OECD Anti-Bribery Convention.

The United States resolved the most foreign bribery cases by far, bringing sanctions in connection with 128 separate foreign bribery cases since the OECD Anti-Bribery Convention entered into force. With the second highest number of enforcement actions, Germany has sanctioned individuals and companies for foreign bribery in connection with 26 separate cases. With the third highest number, Korea resolved 11 foreign bribery cases.

According to the analysis, sanctions were imposed in 69 percent of foreign bribery cases by way of settlements, in-

cluding through the use of non-prosecution agreements and deferred prosecution agreements.

The report also looked at the size of the company involved in the bribery. In 60 percent of the cases, the sanctioned company had more than 250 employees, while only four percent were small and mid-sized companies. In another 36 percent of cases, the size of the company involved was not known.

Most foreign bribery enforcement actions spanned four sectors: extractive (19 percent); construction (15 percent); transportation and storage (15 percent); and information and communication (10 percent).

Culpable Individuals

More than half the cases involved senior management. In 41 percent of the cases, specifically, management was aware of and endorsed the bribery, whereas the CEO was aware of and endorsed the bribery in 12 percent of cases.

The report also detailed the role that intermediaries play in these cases. Of the 304 cases in which intermediaries were used, 41 percent involved agents—such as sales and marketing agents, distributors and brokers based either locally in the country where the bribes were paid, or elsewhere.

Another 35 percent of intermediaries were corporate vehicles. These include subsidiary companies, local consulting firms, companies located in offshore financial centers or tax havens, or companies established under the beneficial ownership of the public official who received the bribes.

"The overwhelming use of intermediaries in foreign bribery cases demonstrates the need for enhanced and effective due diligence, oversight and application of the company's compliance programs to third parties, whether individuals or companies, in international business transactions," the report stated. "Compliance programs should focus specifically on due diligence with respect to agents and on verifying the rationale and beneficial ownership of other companies involved in the transaction."

Bribes were promised, offered, or given most frequently to employees of state-owned or state-controlled companies (27 percent), followed by customs officials (11 percent), health officials (7 percent) and defense officials (6 percent). In the majority of cases, bribes were paid to obtain public procurement contracts (57 percent), followed by clearance of customs procedures (12 percent).

Reporting Practices

In most cases, foreign bribery was brought to the attention of authorities through self-reporting. Companies that self-reported became aware of the foreign bribery in their international operations primarily through internal audits (31 percent) and merger and acquisition due diligence procedures (28 percent).

The second most common source of foreign bribery cases were investigations initiated directly by law enforcement authorities (13 percent) and foreign bribery cases that came to light in the context of formal or informal mutual legal assistance between countries (13 percent). Whistleblower reports and media coverage rarely instigated a foreign bribery investigation (2 percent and 5 percent, respectively). ■

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Mexico's Energy Reform Highlights Corruption Risk

By Jaclyn Jaeger

For the first time in 75 years, Mexico has opened up its energy market to the private sector and to foreign companies. U.S. oil and gas companies looking to enter this new market, however, will need to take steps to reduce their corruption and bribery risks even before signing the first contract.

Mexico's Congress passed long-awaited comprehensive energy reform last December and amended Mexico's constitution to end the country's state-owned energy monopoly held since 1938 by oil company Pemex. The reforms required the passage of secondary laws necessary for their implementation, which President Enrique Peña Nieto signed in August 2014.

Passage of the legislation means that private companies—both foreign and domestic—will soon be allowed to invest in all energy activities in the country. “But those opportunities come with a high degree of corruption risk, because Mexico is an emerging market,” Joan Meyer, a partner with law firm Baker & McKenzie, says.

Under the new system, Mexico's National Hydrocarbons Commission (CNH) may designate specific production activities to state-run entities, such as Pemex, or enter into contractual arrangements with private parties to carry out specified exploration and production activities in a stated territory. Unlike with state-run entities, contractual arrangements with private parties will be awarded through a public bidding process overseen by CNH.

Although Pemex will continue to remain an important player in Mexico's energy sector, central authority has moved into the hands of regulators, explains Fernando Cano-Lasa, formerly in-house counsel for Pemex, and now of counsel at law firm Squire Patton Boggs. “Regulators now have full autonomy to make decisions in regards to the industry,” he says. “They can now act, and are required to act, in the benefit of the industry, and not for the benefit of a certain company or entity.”

That's good news for U.S. oil and gas companies that want to do business in Mexico, but they will have to be on high alert for bribery and corruption. Any business that regularly interacts with foreign government officials is susceptible to bribery and corruption risks. Those risks are exponentially greater, though, when entering an unfamiliar market. Add to that Mexico's long history of corruption, and the risk of a Foreign Corrupt Practices Act violation in the energy sector is even more elevated.

Southern Exposure

Corruption watchdog Transparency International puts Mexico among the most corrupt economies in the world, scoring the country 34 out of a possible 100 in its 2013 Corruption Perceptions Index. Mexico ranks 106th out of 175 countries in the Index.

As reflected by a handful of criminal enforcement actions in recent years, Mexico's energy market, in particular, is no stranger to anti-corruption enforcement by U.S. enforcement authorities. According to analysis conducted by the Mintz Group, out of 17 Mexican companies across eight

sectors that faced an enforcement action for violations of the FCPA since the law was enacted, ten were in the energy sector.

In one of the larger settlements, energy company ABB paid \$60 million in 2010 to the Department of Justice and Securities and Exchange Commission for paying bribes from 1997 to 2004 to officials at Comisión Federal de Electricidad, a Mexican state-owned utility company, in exchange for contracts. Other energy companies that have settled FCPA charges from actions in Mexico include Pride International, Siemens, and Paradigm Group.

Bribery and corruption risks in Mexico have not been limited to just the energy sector. According to the Mintz Group analysis, non-energy companies that have faced an FCPA enforcement action in Mexico include Tyson Foods, BizJet International, Orthofix, Bridgestone, Lindsey Manufacturing, and more.

In a more recent example, Hewlett-Packard reached a \$108 million settlement with the SEC in April 2014 to resolve charges that H-P's subsidiaries in three different countries, including Mexico, made improper payments to government officials to obtain or retain lucrative public contracts in violation of the FCPA. Mexico paid a consultant to help the company win a public IT contract worth approximately \$6 million. At least \$125,000 was funneled to a government official at the state-owned petroleum company with whom the consultant had connections.

The poster child of them all, though—Walmart—highlights just how expensive an FCPA investigation can run. To date, the retail giant has spent in excess of \$400 million in total costs for fiscal years 2013 and 2014 for compliance enhancements and investigation costs related to possible FCPA violations resulting from allegations that executives at Walmart's Mexico unit bribed Mexican officials to open stores in prime locations.

Due Diligencia

Any company wanting to do business in Mexico will need to enlist the help of third parties to help facilitate the process, advises anti-corruption experts. But even that heightens FCPA risks.

Thus, companies should undertake a comprehensive risk assessment before entering Mexico, particularly as it applies to the energy market, by being able to answer the following questions:

- » Who will be your third-party business partners in Mexico?
- » What expertise and services will those third parties be providing?
- » Who on the ground will have contact with foreign government officials or state-owned entities?

Perform adequate due diligence on any potential local hires, business partners, agents, and third parties before engaging them, or entering into any contracts. “Due diligence is a vital component of any compliance program as these new opportunities open in Mexico,” Meyer says.

Potential red flags include a third party that:

- » States or describes services for which it lacks the capacity to perform;
- » Is not being transparent in its interactions with government officials;
- » Demands methods of payment through companies that seem like sham companies or have dubious origins; or

- » Have relationships with government officials responsible for the contracting or regulatory process.

Under Mexico's energy reform, all major agreements for upstream, midstream, and downstream activities will be made publicly available through the Ministry of Energy and CNH. Companies doing business in Mexico have a lot of public information available to them that, if they know where to look, can be used as an important tool to determine whether a particular request made for a payment is proper or not, Cano-Lasa says.

"From an FCPA point-of-view, the more that Mexico can make its process transparent, the more you reduce the risk of corruption," says Rebekah Poston, former assistant U.S. attorney in Florida and now a partner with Squire Patton Boggs.

Audit activities and records related to any new contracts won in Mexico, particularly in the energy market, and be mindful of any excessive, or unusual, payment terms being required by third parties. "Pay special attention to how payments are being processed, or invoiced," Meyer says.

Require companies or individuals working on the company's behalf to certify compliance with the FCPA and other applicable anti-bribery laws on a periodic basis. "Monitor compliance with those policies," Poston says.

Companies should provide anti-corruption training to any employees, consultants, agents, or other third parties acting on the company's behalf who regularly interact with foreign government officials, and that training should be tailored to job function, Meyer advises. In addition, the company's anti-corruption policies and training should be made available in both Spanish and English, she says.

Furthermore, employees should be trained on how to spot red flags, advises Meyer. This is particularly true of employees who interact with agents or business partners on a day-to-day basis, or who process or audit invoices locally, she says. All red flags should be promptly investigated and remediated.

Anti-Corruption Strides

On the surface, Mexico appears to be making strides with its anti-corruption efforts. In 2012, it passed the Federal Law Against Corruption in Public Procurement, which prohibits the offering of money or gifts by individuals or companies with respect to obtaining or maintaining a business advantage in the procurement of public contracts with the Mexican government.

Now that Mexico has reformed its energy market, the law holds even more relevance. "They have a law in place that applies perfectly to these energy reforms," Poston says. "Now, let's see if they use it."

Mexican enforcement authorities, to date, have not brought any enforcement actions under the anti-corruption public procurement law, but some legal experts don't believe that will be the case for long. "It is a relatively new law," Meyer says. "It's going to take awhile for these cases to develop, but I'm sure we're going to see activity in the next few years." ■

WALMART'S ROLE IN FCPA PROBE

In the excerpt below, Walmart explains its actions in regard to the Mexico FCPA investigation.

The audit committee of our board of directors, which is composed solely of independent directors, is conducting an internal investigation into, among other things, alleged violations of the Foreign Corrupt Practices Act and other alleged crimes or misconduct in connection with certain of our foreign subsidiaries, including Wal-Mart de México, S.A.B. de C.V., or Walmex, and whether we appropriately handled prior allegations of such violations and/or misconduct. We are also conducting a voluntary global review of our policies, practices and internal controls for FCPA compliance and strengthening our global anti-corruption compliance programs. Since the implementation of the global review and enhanced anti-corruption compliance programs, the audit committee and we have identified or been made aware of additional allegations regarding potential violations of the FCPA. Inquiries or investigations regarding allegations of potential FCPA violations have been commenced in a number of foreign markets in which we operate, including, but not limited to, Brazil, China, and India. In November 2011, we voluntarily disclosed our investigative activity to the U.S. Department of Justice and the SEC, and we have been informed by the DoJ and the SEC that we are the subject of their respective investigations into possible violations of the FCPA. A number of federal and local government agencies in Mexico have also initiated investigations of these matters. Furthermore, lawsuits relating to the matters under investigation have been filed by several of our shareholders against us, certain of our current and former directors and officers and certain of Walmex's current and former officers.

We could be exposed to a variety of negative consequences as a result of these matters. One or more enforcement actions could be instituted in respect of the matters that are the subject of some or all of the on-going government investigations, and such actions, if brought, may result in judgments, settlements, fines, penalties, injunctions, cease and desist orders, debarment or other relief, criminal convictions and/or penalties. The existing and any additional shareholder lawsuits may result in judgments against us and our current and former directors and officers named in those proceedings. We cannot predict at this time the outcome or impact of the government investigations, the shareholder lawsuits, or our own internal investigations and review. Moreover, we expect to continue to incur costs (incremental to the \$282 million of costs incurred in fiscal 2014) in conducting our on-going review and investigations and in responding to requests for information or subpoenas seeking documents, testimony, and other information in connection with the government investigations and in defending the existing and any additional shareholder lawsuits and any governmental proceedings that are instituted against us or any of our current or former officers. These matters may require the involvement of certain members of our senior management that could impinge on the time they have available to devote to other matters relating to our business.

Source: Walmart.

A Few Countries Adhere to Anti-Bribery Pledge

By Joe Mont

Despite a 15-year-old promise to do so, many of the world's leading economies are failing to do enough to prevent corruption and bribery, according to a report from anti-corruption watchdog Transparency International.

The Organisation for Economic Co-operation and Development's Anti-Bribery Convention, adopted in 1997, was a pledge by signatory countries to make foreign bribery a crime and hold both individuals and enterprises culpable. Forty-one countries, accounting for approximately two-thirds of world exports, signed the agreement. Years later, however, only four "are actively investigating and prosecuting companies that cheat taxpayers when they bribe foreign officials to get or inflate contracts, or obtain licenses and concessions," Transparency International says. Five countries were classified as having "moderate enforcement," while another eight had what was deemed to be "limited enforcement." Twenty-two have "little or no enforcement" procedures in place to ensure their companies do not participate in or facilitate corruption.

The report is the 10th annual update by Transparency International on the OECD agreements. "For the anti-bribery convention to achieve a fundamental change in the way companies operate, we need a majority of leading exporters to be actively enforcing it, so that the other countries will be pressured to follow suit," José Ugaz, chairman of Transparency International, said in a statement. "Unfortunately, we are a long way from that tipping point."

"Fifteen years should have been enough to enforce these commitments," he added. "The OECD has worked hard to make the convention a powerful tool and pushed governments to adopt tough laws. Now, it needs to make sure that enforcement authorities have all the support they need to

counter the growing power of cross-border crime networks."

The four leading enforcers (Germany, Switzerland, United Kingdom, United States) completed 225 cases and started 57 new cases from 2010-2013. The other 35 countries completed 20 and started 53. Twenty countries have not brought any criminal charges for major cross-border corruption by companies in the last four years. Canada is the only country to show significant improvement since last year's report, having significantly improved its foreign bribery law and started several investigations.

Nine of the 20 countries with the least public sector corruption are doing little or nothing to make sure their companies follow the same standards overseas, allowing them to contribute to public sector corruption elsewhere, the report claims. Also, nine G20 countries fell into the "little" or "no enforcement" categories, meaning they are also failing to meet goals set in the G20's anti-corruption action plan.

Transparency International makes the argument that enforcement metrics are low because investigators "lack political backing to go after big companies, especially where the considerations of national economic interest trump anti-corruption commitments." Another reason given for why cross-border bribery in international business deals thrives is that investigators lack the resources to track the complex money laundering techniques increasingly used to conceal bribery deals.

The report also notes that "corrupt deals are increasingly masked by sophisticated shell companies whose real beneficial owner is not known, even to authorities."

In response, Transparency International is calling for greater multinational cooperation in order to keep pace with the increasingly cross-border nature of crime. The group also reiterated its call on the EU and G20 to ensure the publication of beneficial ownership in public registers of company information. ■

ENFORCEMENT BY COUNTRY

In its 10th annual update on the Organisation for Economic Co-operation and Development agreements, Transparency International revealed the following key findings.

Fifteen years after the OECD's Anti-Bribery Convention entered into force, there are still 22 countries with "Little" or "No Enforcement" and eight countries with only "Limited Enforcement." As a result, the Convention's fundamental goal of creating a corruption-free level playing field for global trade is still far from being achieved.

The Convention will not reach this goal until the parties with lagging enforcement meet their commitments under the Convention. Foreign bribery is not an abstract phenomenon; it has damaging consequences in the form of contracts not going to the best qualified suppliers, prices often being inflated to cover bribe payments, environmental requirements not being enforced and taxes not being collected.

In order to achieve effective enforcement, joint civil society/business

sector advocacy programmes should be conducted in countries with lagging enforcement.

There are a few improvements that can be reported, but the performance of the majority of the 40 countries that agree to combat foreign bribery in international business transactions is far from satisfactory.

Only two countries [improved from 2013 to 2014]—Canada and New Zealand—and two countries have regressed, with Bulgaria and Denmark both dropping from the "Limited Enforcement" to the "Little or No Enforcement" category.

The classification of other countries has not changed.

Source: Transparency International.



cutting through complexity

Anti-Bribery and Corruption:

Rising to the challenge in
the age of globalization

kpmg.com/abc

KPMG INTERNATIONAL

Foreword

Bribery and corruption continue to be a major challenge for every organization doing business globally. With U.S. and global regulators' enforcement of anti-bribery and corruption (ABC) laws continuing unabated, the risks U.S. companies face has only grown greater as they increasingly do business in foreign markets, particularly in developing markets where the risks of bribery and corruption are greatest. Much of the risk companies face today actually resides outside the company with those with whom they are doing business, as well as with those with whom they seek to do business. Our latest survey suggests that businesses may not be managing this outside risk as effectively as they could.

As businesses globalize, their reliance on third parties to conduct business has increased, and this reliance has created even greater risk. According to the Foreign Bribery Report of the intergovernmental Organisation for Economic Cooperation and Development (OECD), more than three-quarters of the 427 corruption cases analyzed in 2014 involved third parties. Necessarily, oversight of these third-party agents, intermediaries and business partners has become a critical part of managing an effective ABC compliance program.

In addition to third parties, cross-border mergers & acquisitions are another area of increasing risk to global businesses. Every U.S. company expanding internationally must exercise appropriate due diligence. Guidance issued by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) encourages buyers to "conduct thorough risk-based FCPA/anti-corruption due diligence procedures on potential new business acquisitions".

This report, based on a global survey of 659 respondents around the world, offers insights into the challenges that global companies face complying with this new world of ABC laws and regulations. For the most part, companies are taking the initiative to curb corruption and raise business standards, but there is still work to be done.



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Executive summary

KPMG conducted a worldwide online survey of corporate risk leaders to find out the strengths and weaknesses of their companies' programs to combat bribery and corruption. There were 659 responses, the main findings from which are as follows:

- There is a sharp increase in the proportion of respondents who say they are highly challenged by the issue of ABC compared with a survey KPMG conducted four years earlier.
- As companies continue to globalize, management of third parties poses the greatest challenge in executing ABC programs.
- Despite the difficulty of monitoring their business dealings with third parties, more than one third of the respondents do not formally identify high-risk third parties. More than half of those respondents with right-to-audit clauses over third parties have not exercised the right.
- ABC considerations are accorded too low a priority by companies preparing to acquire, or merge with, other corporations across borders.
- Respondents complain they lack the resources to manage ABC risk.
- A top-down risk assessment would help companies set priorities, but executives admit that an ABC risk assessment is one of their companies' top challenges.
- Data analytics is an increasingly important and cost-effective tool to assess ABC controls. Yet only a quarter of respondents use data analysis to identify violations and, of those that do so, less than half continuously monitor data to spot potential violations.

Introduction

Globalization has entered a new phase, posing greater challenges for ABC compliance than before. Two trends are driving these changes. First, a growing number of governments around the world are tightening ABC regulations or introducing new laws. Enforcement agencies are working together to stem corruption. International companies must therefore create a strategy of compliance that is not only global but also takes account of national differences in regulation. "A global company should have a global compliance program and perform a global risk assessment, while tailoring its procedures to consider the local environment in which it operates," says Nigel Layton, Partner, KPMG Forensic practice in London.

Second, as companies globalize their operations, supply chains become stretched. Corporations rely more heavily on third parties than before to do business in far-flung parts of the world, often in areas where there is a high risk of corruption. M&A poses its own challenges, because it is often difficult for the acquirer to know before an acquisition exactly how the target company does business with governments. And once a company is acquired, differences in corporate culture, processes and systems can make it hard to integrate the target company into a global ABC compliance structure. These two globalizing trends have created a uniquely challenging environment.

The survey of companies around the world, conducted by KPMG with the assistance of Singapore Management University, shows that companies are attempting to rise to

the challenge – and that a great deal more needs to be done to create a sturdy and efficient ABC structure that is effective in every part of the world, not just in the highly developed economies. Corruption can rear its ugly head in remote locations or in a company's backyard. Companies recognize this growing difficulty, according to the survey.

In 2011, we asked respondents in the U.S. and the UK their views of ABC and are now able to compare their responses to those of respondents of listed UK and U.S. companies in the latest research. The trend is enlightening. The latest responses show a surprisingly steep increase in the proportion of respondents who said that ABC compliance was highly challenging. More than double the number than in 2011 found it difficult to monitor and evaluate compliance. "A growing number of companies are finding it more difficult to deal with ABC issues, because of their complexity, increasing globalization of their operations and the need to deal with these matters in many different jurisdictions," says Jimmy Helm, Partner, KPMG Forensic in Central & Eastern Europe and Global Leader, KPMG Anti-Bribery & Corruption Services.

"There's a greater understanding of the issues faced, but this doesn't mean they are easier to deal with."

This report analyzes some of the key risks companies face when dealing with bribery and corruption. It examines some of the ways in which they are dealing with them and what needs to be done to meet the global challenge.

Respondents	U.S. companies				UK companies			
	US 2011	Ranking 2011	US 2015	Ranking 2015	UK 2011	Ranking 2011	UK 2015	Ranking 2015
Auditing third parties for compliance	43.0%	1	77.0%	1	32.0%	1	51.0%	1
Difficulty in performing due diligence over foreign agents/third parties	42.0%	2	54.0%	4	32.0%	1	48.8%	2
Variations in country requirements – data privacy etc.	32.0%	3	60.0%	3	29.0%	3	43.9%	3
Company's expansion into high growth economies	18.0%	4	53.0%	5	21.0%	4	34.2%	8
Monitoring and evaluating compliance	11.0%	5	38.0%	9	14.0%	5	29.3%	10
Cultural/language issues			62.0%	2		6	34.2%	7
Lack of Internal resources							39%	5
Difficulty in identifying & assessing risk							43.9%	3

Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

Tracking the go-betweens

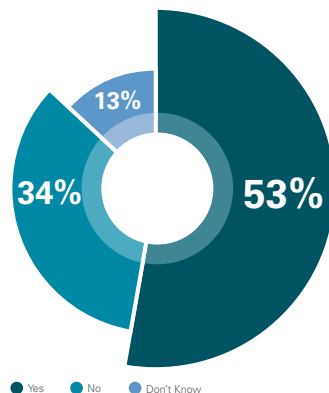
Managing third-party risk is the biggest challenge that companies face in the field of bribery and corruption. We asked our respondents to rank a number of key issues in terms of the level of difficulty. Their answers indicated that two of the top three issues of concern regarding third parties were auditing for compliance and the difficulty in conducting due diligence over foreign agents/third parties. (The second biggest challenge is dealing with the variation in national regulations pertaining to bribery and corruption).

"These and other challenges highlighted in the survey are especially worrisome because a very high proportion of bribes are now paid either by third parties to the ultimate recipient or to seemingly unrelated parties acting on behalf of the ultimate recipient. The interposing of third parties makes it harder to police," says Helm. According to the Foreign Bribery Report of the intergovernmental OECD¹, more than three quarters of 427 corruption cases analyzed involved third parties. Clearly, a lot more needs to be done to manage third-party risk, from the vetting and selection of suitable intermediaries and suppliers to the continuous monitoring of transactions with these third parties.

Despite acknowledging the problems in managing third-party risk, more than a third of the respondents (34 percent) admitted they do not formally identify high-risk third parties. For those respondents that do have a formal process to identify high-risk third parties, only 56 percent indicated that they have right-to-audit clauses in their contracts with third parties; however, only 41 percent of these respondents have actually exercised such right. Only 69 percent of all respondents assess third-party risk. These low numbers suggest there are big gaps in companies' ABC compliance programs that need urgent remediation. "Companies need to take a risk-based

approach to the ABC due diligence of vendors. Even where companies indicate that ABC risk is considered, there is often no audit trail or a very poor one to identify high-risk third parties and no clear ranking of them according to the level of risk," says Roy Muller, Director, KPMG Forensic in South Africa. "Knowing your supplier is often a big challenge in Africa. In certain African countries electronic records are not maintained or are not easily accessible necessitating physical verification of company records," he says.

Q. Do you have a formal process to identify high risk Third Party Intermediaries/Associated Persons from an ABC perspective?



Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

Moreover, some 31 percent of respondents to the 2015 Survey admit they do not have formal risk-based onboarding processes for third parties, opening companies to the possibility of corrupt practices spreading contagion. "When Asian companies say they do due diligence for onboarding, it is mostly around credit risk," says Lem Chin Kok, Partner, KPMG Forensic in Singapore. "If they really put in place a formal approach to assessing ABC risk at the onboarding stage, it would be much more effective." A lot of the problems could be tackled at this point by probing the third party more deeply, says Judith Galván, Partner, KPMG Forensic

Ranking of top ABC challenges

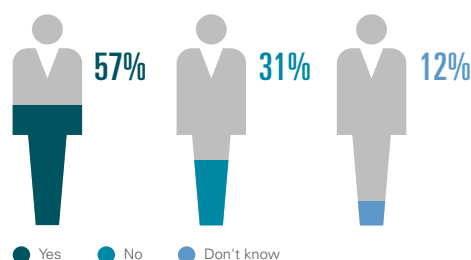
All respondents 2015



Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

in Mexico, who offers this guidance: "Obtain as much information as possible from third parties and be open about the fact that you want the information. Tell them it's riskier to do business with companies that are unwilling to provide the information," she says.

Q. Do you have a formal business risk based process for on-boarding your Third Party Intermediaries/Associated Persons?



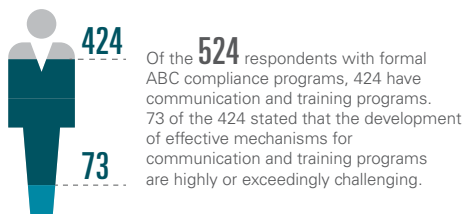
Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

Often, compliance officers have to apply the brakes during the onboarding process, says Marc Miller, Partner, KPMG Forensic in the U.S.. "They need to be cautious

¹ OECD (2014), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing <http://dx.doi.org/10.1787/9789264226616-eng>

about whom they bring onboard and not only evaluate who the company is, but also the individuals standing behind the entity. This provides a more complete evaluation of whether they should partner with them while at the same time ensuring that the amount paid to the third party is at market value. For this, companies need to see how the performance of the third party is measured and who stands behind it."

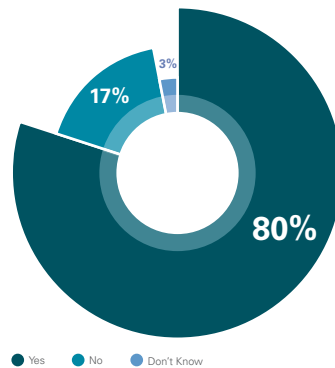
Once on board, 60 percent of respondents say their companies distribute their ABC policies to all third parties or selected third parties, still fewer in the local language. "We have found that companies operating in Africa do not always translate their ABC policies into local languages," says Muller. In South Africa, there are 11 official languages including English, and ABC policies are mostly available in English only. According to the survey, two-thirds of respondents do conduct a third-party risk assessment, but the questions asked are not exhaustive: 50 percent don't ask whether the third parties provide high-risk services. Their owners and directors may not appear to have personal links to government officials, but this does not mean their business operations are not tied to dubious dealings.



It may be surprising to some, but the fact is that many companies are reluctant to police their third parties directly. "There's a significant internal reluctance from the likes of the procurement function and the sales force to enforce compliance on third parties. Then there is push-back by the corporate's business partners; on the other side, management is often hesitant to offend them, particularly strategic suppliers or distributors," says Helm. Third-party corporations can be equally shy about opening their books to clients and corporate customers. One answer is to

engage an independent service provider with access to relevant data bases to monitor third parties continually to identify changes that might affect the risk rating. Performing a single Google search of a third party is inadequate, says Muller.

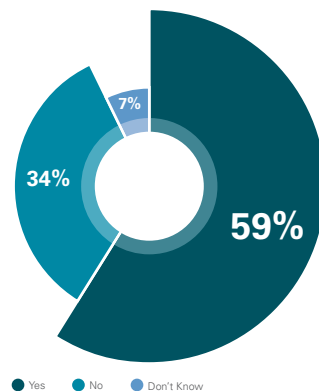
Q. Does your company have a formal, written anti-bribery and corruption compliance program?



Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

Q. Are your anti-bribery and corruption policies and procedures translated into multiple languages?

Among Those Who Have A Formal, Written Anti-bribery And Corruption Compliance Program



Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

KPMG Forensic in Mexico offers this guidance:

Obtain as much information as possible from third parties and be open about the fact that you want the information.

Enforcing compliance

Inadequate management of third-party risk is part of a wider problem of implementation. The U.S. Foreign Corrupt Practices Act (FCPA) has been in effect since 1977 and the UK Bribery Act since 2011, so it would be rare to find a global company that doesn't address ABC to some degree within its compliance program. The UK Bribery Act criminalizes a corporation's failure to prevent bribery in the UK or abroad by an "associated person," which it broadly defines as a person who performs services for, or on behalf of, the corporation.

Pushed by the OECD, member governments and partners have adopted tighter ABC regulations. And in Asian and South American emerging markets, enforcement agencies are becoming much more active. It seems that the threat of enforcement through the FCPA and UK Bribery Act is causing suppliers of U.S. and UK entities to develop formal ABC programs of their own. Seventy-nine percent of non-U.S. or non-UK respondents listed elsewhere say they have done so. Eighty-seven percent of non-U.S. or non-UK unlisted respondents doing business with U.S. and UK entities, have formal ABC programs. Galván confirms this trend, noting that more and more Mexican companies are coming under pressure from their corporate customers in the U.S. and the UK to adopt ABC programs. "Companies are certainly taking seriously the trend towards stronger enforcement worldwide," says Pam Parizek, Partner, KPMG Forensic in the U.S..

But how effective are their ABC compliance efforts? "Companies often think they have built a good program, but when we audit it, we find they haven't," says Layton. "They may have good policies and procedures, but they are not good at cascading it down to third parties. They have not done an overall risk assessment. They have not trained people to follow the policies at the level where individuals are asked to pay bribes."

As noted earlier, the survey shows a sharp increase in the number of respondents who say they are highly challenged by the issue of ABC. "Five years ago, people thought they were doing enough in the area of ABC compliance, and now they realize they are not. They know it's a problem and that they have to do more," says Helm.

> Managing cross-border risks

One sign of globalization is the growing extent of cross-border M&A. No less than 60 percent of respondents in our poll say they engage in M&A. For listed U.S. and UK corporations, the figure is 71 percent. Guidance issued by the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission² encourages buyers to “conduct thorough risk-based FCPA/anti-corruption due diligence procedures on potential new business acquisitions” to avoid successor liabilities and to avoid future bribe payments occurring. For listed U.S. and UK corporations, only 69 percent of respondents indicated that they include ABC considerations as part of the pre-acquisition due diligence process. For unlisted entities and non-U.S./UK listed entities, the figures were lower, at 54 percent and 55 percent respectively.

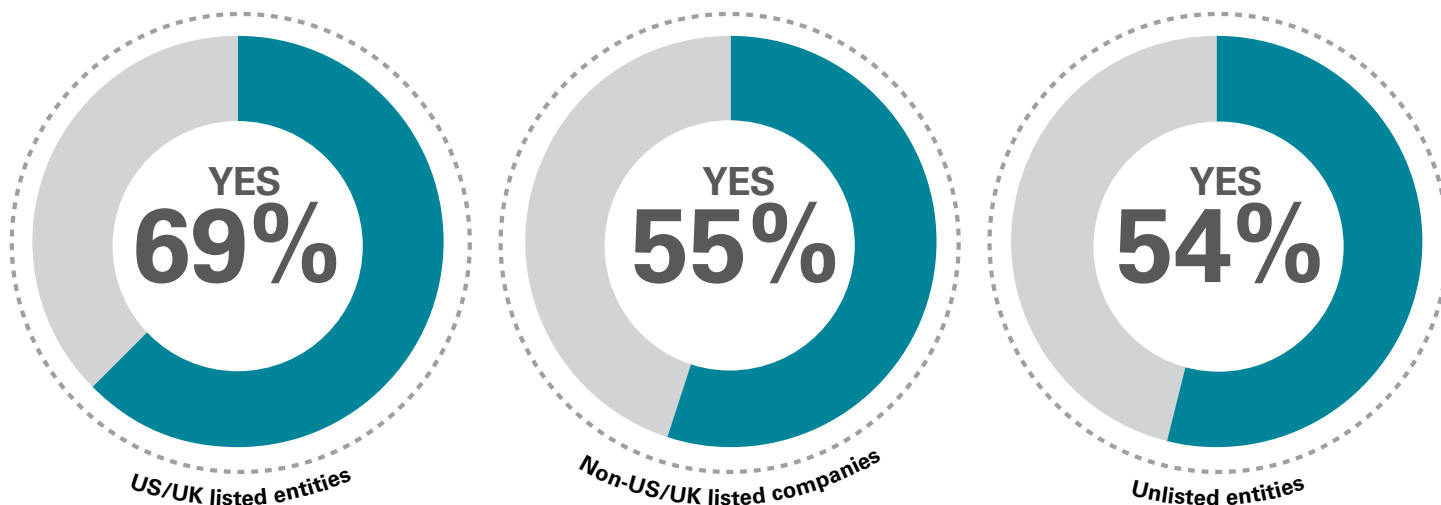
Rocco deGrasse, Principal, KPMG Forensic in the U.S., recognizes that buyers are not always freely able to perform all-encompassing due diligence procedures over their targets. He says that this is particularly true in an auction or where the buyer is a competitor of the target. The target in these instances is likely to restrict the amount of detailed information it provides regarding how it does business and with whom. This is especially true in regard to ABC-related due diligence projects, which by definition involve questions and issues of extreme sensitivity.

Possible remedies include the use of an independent party to perform the ABC due diligence procedures, an approach in which the target may require the independent party to sign a non-disclosure agreement. The independent party in this scenario obtains sensitive marketing and financial information (often involving supplier/customer information) and then reports to the buyer without disclosing the details.

Where this is not feasible, the buyer should in the pre-acquisition stage at least take steps to inform itself as much as it can from publicly available sources about the target, its reputation and that of its principals, the market in which the target operates, its likely customers, and government relationships. Certain of these procedures often are performed without the target’s knowledge, or in a manner that will not offend the target. “ABC pre-acquisition due diligence is very delicate work,” says deGrasse. “It’s about obtaining sensitive information with limited leverage.”

deGrasse goes on to recommend that, where the buyer cannot perform adequate ABC due diligence procedures prior to acquisition, it should perform appropriate post-acquisition procedures to address residual ABC-related risks associated with the acquired entity. The DOJ has provided guidance to acquirers in the form of Opinion Procedure Release – 8-02³, which sets forth procedures that would mitigate exposure if a bribery issue were to arise later.

Q. Does your company include ABC considerations as part of the pre-acquisition due diligence process?



Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

² A Resource Guide to the U.S. Foreign Corrupt Practices Act, By the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012 <http://www.justice.gov/criminal/fraud/fcpa/guidance/guide.pdf>

³ See DOJ, FCPA Op. release 08-02 (June 13, 2008) <http://www.justice.gov/criminal/fraud/fcpa/opinion/2008/0802.pdf>

> Better controls needed

This report has discussed a number of ABC risks facing companies around the world. It is imperative that once the risks have been identified, the company's ABC controls are evaluated to determine whether they are effective in mitigating the risks. This is a highly complex task: survey respondents say that the difficulty of identifying and assessing ABC risk ranks as the fifth most significant challenge that they face.

One difficulty is that this assessment requires money and manpower. In fact, the lack of resources ranked fourth overall among the top challenges facing the survey's respondents; it actually ranked third for companies listed on stock exchanges outside the U.S. and the UK. "Global companies simply don't have the bandwidth to deal with ABC issues around the world," says Parizek. "U.S. and UK companies tend to have sufficient resources at the Head Office, but not at the level of subsidiaries. As for corporations based in other jurisdictions, resources are lacking."

Many companies are not making a risk assessment a high enough priority, says Muller. "The whole reason for performing an ABC risk assessment is to ensure that the program actually does the job of mitigating the risk, especially in the most difficult locations," says Parizek. This makes it essential to conduct a comprehensive top-down risk assessment. Only then can companies determine where the controls fall short and establish spending priorities for ABC compliance. If the ABC controls are not mitigating the risks identified, then they need to be redesigned, she says.

It is apparent from the survey responses that many important controls have not been implemented, says Helm. Companies have failed to compel their business partners to follow their compliance programs, to exercise right-to-audit clauses over third parties and to tailor training programs to address the local circumstances and customs.

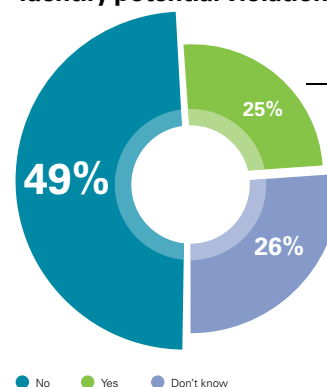
> Finding the needles

One of the most cost-effective tools for monitoring ABC controls is data analytics. It would be almost inconceivable for a global company to monitor its entire operations for possible suspicious activity without the use of data analytics. Yet, only a quarter of respondents use data analytics to identify controls violations and of those that do so, a mere 42 percent continuously monitor data to spot potential violations. These numbers are "shockingly low," says Gerben Schreurs, Partner, KPMG Forensic in Switzerland and Global Leader, KPMG Forensic Technology Services. He cautions, however, that analyzing reams of data is not valuable if companies don't ask the right questions. Companies need to analyze trends in activities such as transactions and flag unusual occurrences in high-risk areas of the business. "People get lost in choosing from a wide array of tools, instead of focusing on what question to ask and what data is needed to find the answer," says Schreurs. This requires close collaboration among data analysts, compliance officers and the business managers to prevent and detect ABC risks.

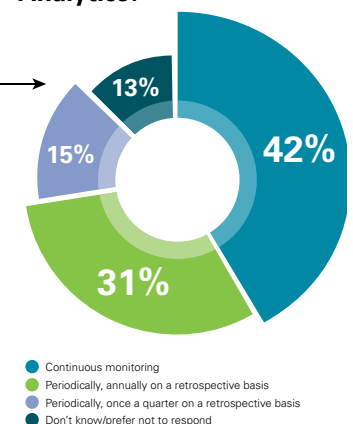
Such cooperation is particularly difficult after a corporate acquisition, since the target's and the buyer's computer systems are not integrated. "There has to be efficient monitoring to see whether a compliance program is working," says deGrasse. "A lack of integration makes it much more difficult to measure the effectiveness of the program." It requires a great deal of manual effort to extract information contained in journal entries

from ledgers in order to determine who paid whom, and for what services. Even those companies that employ data analytics often do so on a piecemeal basis or on an annual cycle, says Schreurs. Continuous monitoring of ABC compliance may require a sizeable investment at the outset in an automated system, but in the long run it is more efficient than taking an ad hoc approach.

Q. Do you conduct ABC specific Data Analytics to identify potential violations?



Q. What is the frequency of conducting the ABC Data Analytics?



Source: Global Anti-Bribery and Corruption Survey, KPMG International, 2015

> Conclusion

This report sets out to show that companies are having a hard time rising to the challenge of managing their ABC risk, as globalization enters a new phase. Corporations with international operations are tightening their ABC controls and procedures, causing companies in their supply chains to fall into line. There is clear evidence they are trying to deal with third-party risk on the one hand and with the growing number of national ABC regulations on the other.

Yet, despite better controls and stronger ABC policies, companies continue to fail to comply with the tougher regulations, and are fined heavily as a result. Why? Is it that ultimately, corporate executives are not focusing enough on ethical business conduct? Much has been said about “tone at the top”; yet we continually see failings at middle and lower management level, which leads one to conclude that there is not enough focus on “tone at the middle.” Companies can have a perfect ABC program and yet continue to fall short, if they do not improve the way they do business. Indeed, an excellent ABC program may even lull the senior executives into a false sense of security. Alternatively, it might instill a sense of cynicism among corporate leaders, who may believe that a finely-tuned ABC program makes it unnecessary to conduct its affairs according to the highest standards of business ethics.

But the world is changing, and business conduct needs to change along with it. Both the business community and world leaders have recognized that progress can only be made through the joint action of government and the private sector. One forum where these issues are being discussed is the B20, a group of private sector organizations in the G20 economies that provide official recommendations to the G20 leaders on how to promote integrity and transparency in business. In the past five years the focus on anti-corruption has intensified, with business seeking a more harmonized global regulatory landscape that recognizes and encourages responsible business practices, as well as discouraging unethical behavior. We have a long way to go to curb corruption, but the B20 is taking a step in the right direction.

The B20 coalition brings together business leaders from the G20 economies and advises on the views of more than 6.5 million small, medium, and large companies. KPMG has been a member of the anti-corruption taskforce since 2013 and was co-chair of the group in 2014.

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