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# GLOBAL WHITE-COLLAR CRIME SURVEY 2018

## ANTI-BRIBERY AND CORRUPTION

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## EXECUTIVE SUMMARY

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Bribery and corruption in international business are now priority concerns for most developed nation-states. This is particularly the case for those OECD countries with large shares of world exports, as international conventions, such as the OECD Anti-Bribery Convention that came into force in 1999 and the United Nations Convention against Corruption that came into force in 2005, have sought to harmonise legal and normative anti-bribery standards, rules and enforcement. Alongside these ambitious legal frameworks, we are now seeing many ostensibly 'respectable', global corporate elites being implicated in the bribery of public and private officials, internationally and domestically. For most corporations operating transnationally, the threat of enforcement action is real given the increasing trend towards the introduction of domestic criminal law frameworks with extra-jurisdictional reach.

The US Foreign Corrupt Practices Act 1977 remains the most active enforcement arena, with international companies regularly agreeing large financial penalties since the early 2000s, but with the underlying threat of criminal prosecution. In the UK, the introduction and enforcement of the Section 7 offence of the Bribery Act 2010 concerning the 'Failure of Commercial Organisations to Prevent Bribery' has reinforced the necessity for corporations operating multi-jurisdictionally to implement 'adequate procedures' to prevent bribery throughout their organisational structure. The UK Ministry of Justice's Guidance document provides an indication of procedures and principles that could be put in place by relevant commercial organisations to prevent persons associated with them from bribing, and we have seen the publication of guidelines (for varying purposes) by several non-governmental organisations to aid in this process. However, what 'adequate procedures' actually look like remains unclear, as only one case has been contested in the courts. In France, the anti-bribery landscape has shifted with the coming into force of Sapin II in 2017, which incorporates a prescriptive requirement for companies of a certain size to implement appropriate compliance systems. Extra-territorial enforcement possibilities also exist in Germany where, once it is established that the corrupt act took place at least partly in German territory, jurisdiction may be extended to foreign accomplices acting abroad.

How businesses respond in this enforcement climate is crucial, both in terms of reducing opportunities for bribery, but also in terms of any interactions with regulators that might take place. When businesses are implicated in such (transnational) bribery, it means the company or its employees, intermediaries, subsidiaries or agents, have engaged in an illicit relation of exchange for the company's benefit. That is, the company or its associated persons offer, promise or give an advantage (usually financial, but not always) with the

explicit intention to win or maintain business, though such bribes may also be extorted. Businesses need to be prepared for those scenarios where bribery may take place within their organisational structures.

To inform the debate on the increasing anti-bribery requirements faced by global commercial organisations, and provide a more nuanced understanding of business practices 'on the ground', this research aimed to develop empirical insights, based on a survey of over 250 business actors, into the organisational, cultural and structural conditions that are conducive to bribery in order to:

- **Assist commercial organisations in understanding the potential risks behind certain business practices or certain types of associated persons;**
- **Enable internal compliance officers and external legal counsel to provide empirically-informed advice on relevant preventative procedures, due diligence practices, internal compliance procedures, training etc.; and**
- **Enable the development of evidence-based compliance of commercial organisations with the requirements of anti-bribery provisions and enable companies to 'benchmark' their approach in contrast to comparable global businesses.**

## KEY FINDINGS

- One in five respondents indicated that their company does not have a formal policy on anti-bribery and corruption. Of those companies that do have a formal anti-bribery and corruption (ABC) policy, there are indicators of good corporate practice in terms of accompanying training provision.
- 76% of respondents indicated that senior management in their company mainly approaches ABC through establishing a 'code of conduct'. However, beyond this approach, there is little consensus about what might be considered an 'ideal' approach by senior management. Further investigation and guidance is needed to establish a set of benchmarks for senior management teams.
- If bribery is suspected, employees are mostly likely to notify their direct managers in the first instance, rather than their peers or external actors, such as the regulators. This makes the relationships between direct managers and employees central to engendering pro-social, ethical ABC corporate environments. While the ABC discourse frequently promotes the 'tone from the top' as central to ABC within business, it is likely that 'the tone from the middle' is more fundamental to operationalising effective ABC.
- 30% of respondents - almost one in three - considered it likely that someone in their company would get away with paying a bribe on behalf of their company.
- Although three quarters of respondents expect employees to face some kind of

consequences for involvement in bribery, 50 out of the 252 respondents (ca. 20%) believe the employee would get away with it, either because it would not be discovered (12%) or because management allows it (8%). Furthermore, of those respondents who expected employees that bribe to face consequences, 32% did not indicate that employees within their company would be dismissed for involvement in bribery. In other words, almost one in three of these respondents do not think an employee implicated in bribery would be dismissed.

- 39% of respondents in non-legal/compliance roles (i.e. sales, marketing etc.) indicate that they think it would be definitely or probably possible for someone in their role to offer a bribe to a public official for preferential treatment. That is, almost two out of five respondents in these positions recognise opportunities for bribery in the course of their roles. This indicates that conducive structures for bribery exist in businesses. Of these respondents, 40% indicated that opportunities for bribery arise routinely during existing business relationships. This is an important finding as it reinforces that bribery does not take place outside of 'normal business practice', exposing company insiders to bribery opportunities on a daily basis.
- When asked which factors present the main bribery risks to their companies, our respondents across compliance and sales roles indicated that working in countries where bribery is common is the main concern, followed by using agents or consultants and the use of corporate hospitality, gifts and entertainment. This finding corresponds with the extant literature and enforcement data on foreign bribery where we see local cultures, third parties and the ambiguity surrounding hospitality as concerns for business.
- An overwhelming majority of respondents (80%) believe it is never acceptable to bribe. However, although a small proportion, it is interesting to note that some respondents believe it to be always acceptable to bribe (3%), believe it can be acceptable if it helps get new business (6%), or believe it is not acceptable but cannot be avoided (11%).
- The use of third parties and bribery risks: 48% of respondents who are involved in engaging third parties in a business context (i.e. individuals in business roles) do not often or never think about bribery risks when doing so. This indicates that, while there may be a general understanding that using agents or consultants poses bribery risks, in practice, company insiders do not always check for bribery risks in specific cases of engaging them. There should be a focus on developing internal company procedures to bridge this gap and target the policies and guidance on third party risks to the most critical areas of the company structure.

## **AUTHORS AND ACKNOWLEDGEMENTS**

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# 1. ANTI-BRIBERY AND CORRUPTION POLICIES AND PROCEDURES

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There is much empirical evidence that ‘culture corrupts’<sup>1</sup>; that a corporation’s institutional context and culture can produce an environment that encourages, colludes in, or is culpably blind to law-breaking<sup>2</sup> and thus provides the means, setting, rationale and opportunity for the behaviours<sup>3</sup>. Organisational culture incorporates the autonomous elements beyond individual actors, that is, it provides a lens through which we can understand the influence of macro-institutional forces outside of the organisation on individual decisions and actions located within corporate structures, goals and processes<sup>4</sup>.

For businesses operating globally, it is important to ensure anti-bribery and corruption policies and systems are in place in order to i. reduce opportunities for employees to engage in bribery transactions, ii. make certain that employees know how to correctly respond should such opportunities arise, and iii. provide a robust (legal) defence should the gaze of the enforcement authorities be turned upon their commercial activities. Most respondents (71%) in our survey indicated that their companies have a formal policy on anti-bribery and corruption. However, almost one in five (19%) of respondents indicated their company does not have a formal policy on anti-bribery and corruption (Chart 1). This represents a significant proportion of our sample.

## **1.1 Companies with no formal ABC policy**

The companies of those who responded ‘no’ are based in a range of industries (Manufacturing 32%; Construction 28%; Technology 11%; Logistics 6%; Financial Services 4%; Real Estate 4%; Pharma/Healthcare 2%; Defence 2%) and tended to have a smaller annual turnover (49% work for companies with turnover of less \$10million, 30% for companies with turnover between \$10million-\$100million, 11% for companies with turnover between \$100million-\$1billion and 4% for companies with turnover between \$1billion-\$10billion).

Though many of the companies without a formal ABC policy are at the lower end of the scale in terms of turnover, it is particularly surprising that some large companies did not have a formal ABC policy. This finding is not industry-specific, as we discovered examples of large companies without

formal ABC policies across sectors: a company in the defence sector with more than 50,000 employees, a compliance team of more than 100 people and operates in most regions of the world; a US-based company in the pharmaceuticals/healthcare industry with an annual turnover between \$1billion-\$10billion; a large provider of alternative financial services. This finding indicates that perceptions of the necessity of a formal ABC policy might be influenced by company-specific factors rather than industry- or regulation-specific ones.

## **1.2 Companies with a formal ABC policy**

Of the 178 (71%) respondents that work in companies with a formal ABC policy, the vast majority (97%) have clear access to the policy – they either have a copy themselves, can directly access a copy, or can request it from another person within the organisation.

Respondents who work in companies with a formal ABC policy were asked to rate how well they thought they knew the policy on a scale of 1 (don’t know it at all) to 5 (know it completely). 162 (91%) of the respondents rated their knowledge at 3 or above, showing an overall confidence in their level of knowledge in the policy.

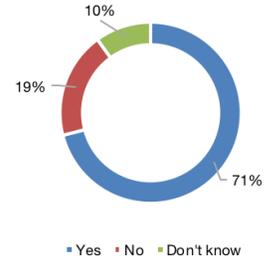
Chart 2 shows the percentage of respondents whose companies have a formal ABC policy, and who showed confidence in their level of knowledge, who said that the following points were covered in the policy.

As we might expect, a substantial majority of these respondents (96%) indicated that their company’s formal ABC policies communicate that bribery is prohibited. Areas least covered by the policies were rules on donations to charitable causes, the requirement of due diligence on third parties, and the need to enter gifts/entertainment/hospitality on a register. It is encouraging that a significant number include policies covering procedures for whistleblowing as well as the prohibition of facilitation payments.

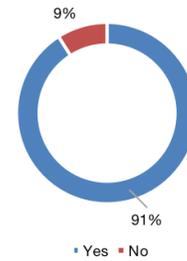
### 1.3 ABC training

Ensuring that an ABC policy is in place and accessible to employees is of course important. However, for such policies to be translated into actual practice, it is vital that companies provide robust training. This ensures that core ethical ABC narratives become embedded in the daily working practices of those employees that may encounter bribery and corruption. We asked those respondents that work in companies that do have ABC policies to provide further insights into the training that they receive (Chart 3).

**Chart 1**  
Does your company have a formal policy on anti-bribery and corruption?

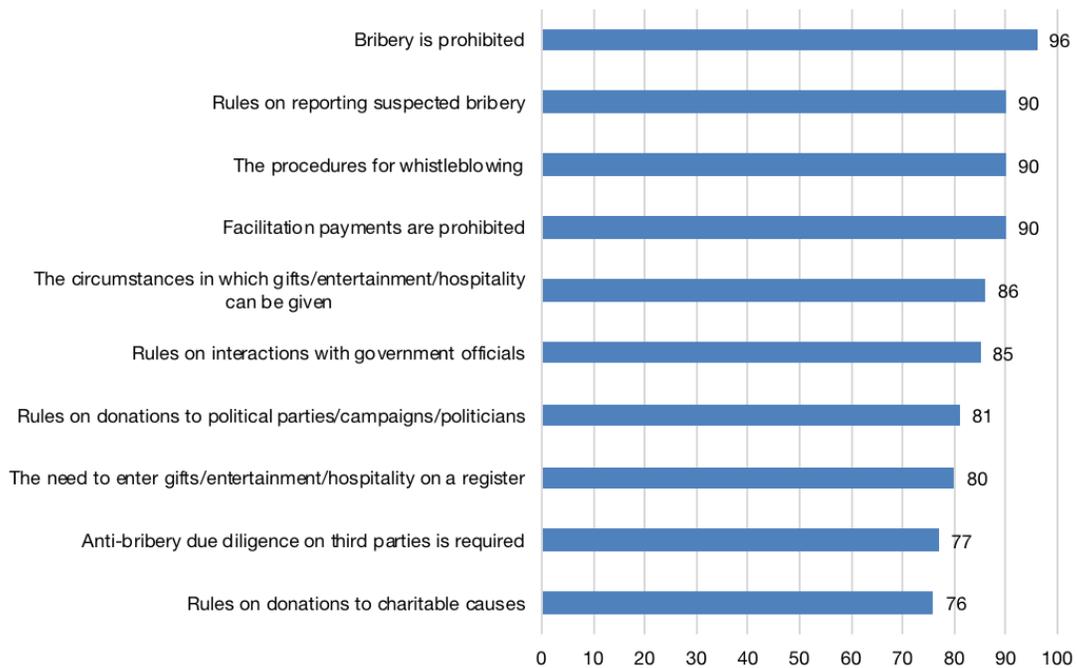


**Chart 3:**  
Have you been given training on your company's ABC policy?



**Chart 2**

Are the following points covered by your company's ABC policy?



Percentage of respondents whose company has an ABC policy and who assessed their level of knowledge of the policy as 3 out of 5 or above (respondents could select multiple answers)

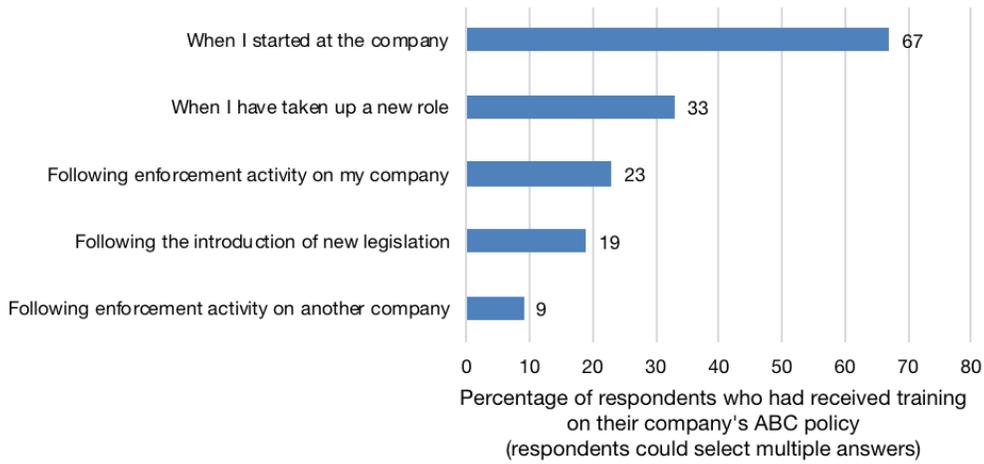


Chart 4

*When did you receive training on your company's ABC policy?*

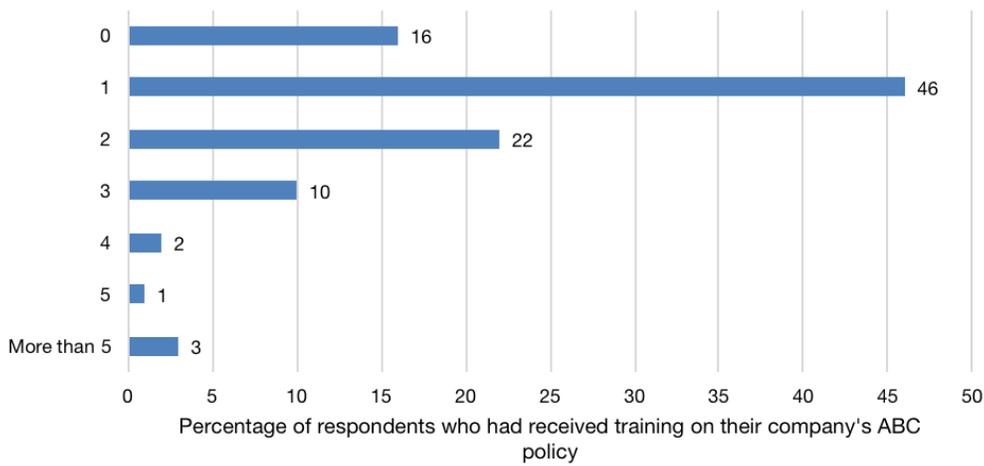


Chart 5

*In the last 12 months, how many times have you received training on the ABC policy?*

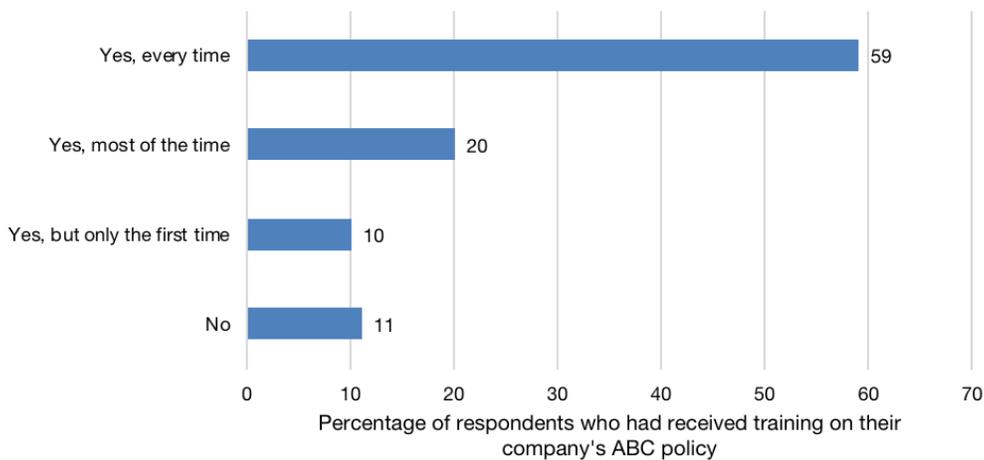


Chart 6

*Does the training involve questions testing you on your understanding of the policy?*

The majority of respondents (91%) whose company has an ABC policy had been given training on the policy. 67% of those received training on the ABC policy when they started at the company, 33% received training when they had taken up a new role, 23% received training after an enforcement activity on their own or another company, and 19% (31 respondents) received training on the ABC policy following the introduction of new legislation. Of the respondents who received training following enforcement activity, all are from companies headquartered in the US or Europe: 18 (58%) headquartered in USA; 5 (16%) headquartered in UK; 3 (10%) headquartered in France; with the remaining 5 (16%) headquartered in Austria, Netherlands or Germany. This may be an indicator of how sensitive companies from the US and Europe currently are to the global enforcement climate, particularly given the most stringent ABC laws emanate from these regions.

For instance, there has been a recent but steady trend towards increased regulation and enforcement in the anti-bribery sphere. The trend was historically spearheaded by the US, which at the federal level, under the Foreign Corrupt Practices Act (FCPA), does not have specific laws on commercial bribery, but regulates it indirectly by requiring 'issuers' to ensure accuracy in the reporting of their accounts. The extraterritorial reach of the legislation is evidenced in the broad definition of "issuers": companies that list on a US stock exchange, regardless of main location of business<sup>5</sup>. This means that global corporations can be held liable under US law solely for the fact that their stocks are trading on, for example, NYSE. In addition, whenever US jurisdiction applies, the company's officers, directors, employees, agents or stockholders acting on its behalf anywhere in the world can be prosecuted<sup>6</sup>.

The regulatory zeal has also been transposed into actual enforcement actions. In fact, 2016 was the most successful year in FCPA history with record numbers of both enforcement actions against companies and individuals, and of overall amounts paid to resolve them in settlements brokered by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) (\$2.48bn)<sup>7</sup>. The trend continued in 2017, when a smaller number of companies than in 2016 paid almost the same amount in penalties (\$1.92bn)<sup>8</sup>. In addition, the DOJ is continuously introducing innovative enforcement actions and programmes such as, for example, the declinations with disgorgement - a new category of enforcement action created as part of the DOJ's Pilot Program.

Respondents were also asked how many times they had received training on their company's ABC policy in the last 12

months, and whether the training they had received involved being tested on their understanding of the policy (Chart 5). Almost half of these respondents (46%) indicated that they had received training once in the last 12 months, while 84% had received training once or more in the last 12 months. 16% indicated they had not received any training in the last 12 months.

When we further probed respondents on the training they receive, and in particular whether the training involves questions testing them on their understanding of the policy, 89% indicated that they had been tested in this way (Chart 6). 59% indicated they are tested each time they receive training. Furthermore, to complete the ABC training they are required to pass a corresponding test (Chart 7). The respondents found the training to be useful in helping them understand ABC policies; this is an important takeaway for designing internal corporate ABC practices.

The survey data indicate that there is good corporate practice in terms of providing ABC training. Establishing a pro-social corporate culture is fundamental to ensuring an ethical climate exists. This culture must communicate clear and concise anti-bribery and anti-corruption norms and values, and ensure that employees are fully socialised into these ways of thinking. One part of institutionalising these belief systems is by developing robust policies and procedures that become part of the fabric of the business environment.

Chart 7

Do you have to pass the test in order to complete the training?

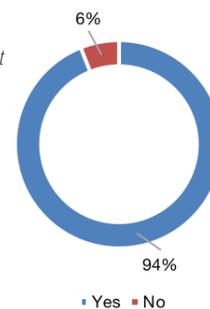
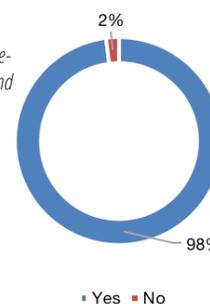


Chart 8

Did you find the training useful in helping you understand the policy?



### 1.4 Nature and scope of internal compliance functions

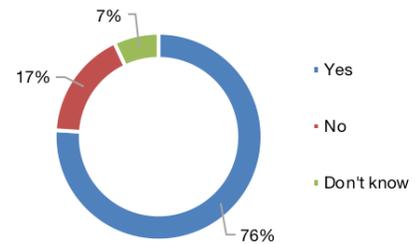
It is well established that those businesses that are best prepared for dealing with anti-bribery and corruption risks have installed effective, well-functioning and extensive internal compliance systems and structures. We asked respondents to provide insights into the nature and scope of internal compliance functions within their companies (Chart 9). 76% of our respondents indicated that their company has a compliance officer or equivalent. 17% of respondents' companies, almost one in five, did not have a compliance officer or equivalent.

Of those companies that did have compliance functions, the size of the compliance teams varied from one person to more than 100 people (Chart 10). The category with the most responses (45%) was 2-10 people. Given the global nature of the companies in the sample, we asked the respondents where their company's legal and compliance functions were based, and whether responsibility was at the global, or local/country level (Chart 11). 47% of respondents indicated that their company's legal/compliance functions were based within the company headquarters (global responsibility), 17% were based at the country-level offices (local responsibility), while 34% indicated the legal/compliance function was based at both company headquarters (global) and country level (local).

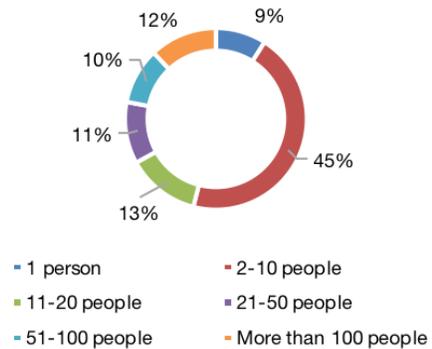
Legal and compliance functions that have global oversight can ensure a consistent and harmonised response towards anti-bribery and corruption across a company's business operations. A centralised narrative can ensure key ideas are coherently communicated across regional officers. However, legal and compliance functions that are based within local offices can be more flexible, tailored and be able to respond with celerity, should urgent issues arise. There are advantages to both approaches. There is no one-size-fits-all model in this sense, however, the global aspect to business operations and the trend of foreign bribery enforcement should be key factors in the development of ABC systems. These have multiple consequences for global commercial organisations. First, global organisations increasingly find themselves simultaneously under the regulation and oversight of regulatory and criminal justice bodies from multiple jurisdictions. This may impose challenges for global corporates to properly interpret legal demands in particular countries. It also exposes them to hazards when cooperating with a regulator in one country of a potential 'cascade' enforcement action in another country. Second, the availability of any defence of 'adequate [corporate governance] procedures' in offences of failure to prevent bribery will be shaped by the increasingly

globalised corporate governance environment. This multiplies the challenges of appropriate interpretation of regulatory demands across different jurisdictions. These problems exemplify the importance of understanding how relationships between corporations and regulators develop in practice, as well as the types of advice that are sought in such circumstances.

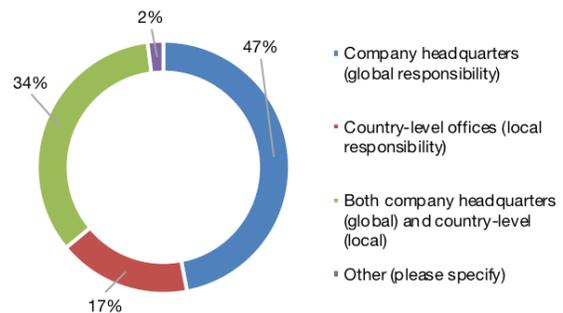
**Chart 9**  
Does your company have a compliance officer or equivalent?



**Chart 10**  
How large is the compliance team in your company?



**Chart 11**  
Where are the company's legal/compliance functions based?



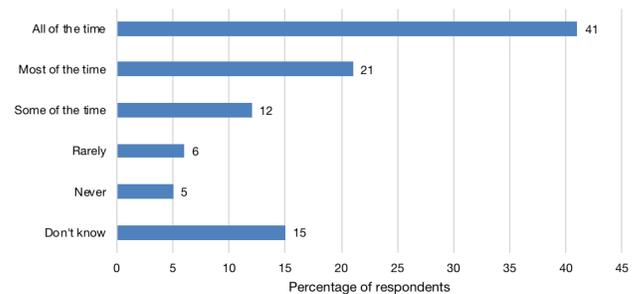
### 1.5 Monitoring ABC compliance

Respondents were asked about the extent to which their organisations monitored compliance with ABC policies and procedures (Chart 12). Those that indicated that their organisations attempted to monitor compliance at least some of the time were asked how the companies did this (Chart 13). 80% of the respondents indicated that their organisation attempts to monitor compliance with ABC policies and procedures to some extent. 41% indicated that such monitoring took place 'all of the time' while 21% indicated that it took place 'most of the time'. Only 5% of respondents indicated that monitoring never took place. This indicates a high level of monitoring within the companies in our sample.

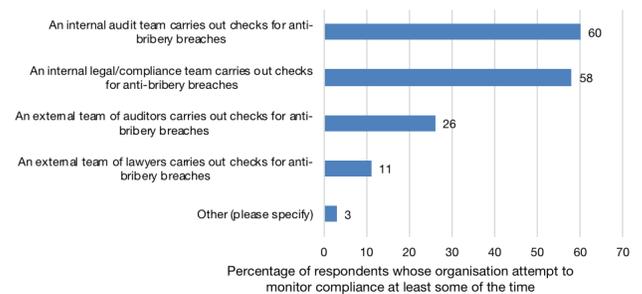
Our respondents indicated that the monitoring is mainly done internally or by internal teams. 60% of the respondents who indicated that their organisations attempt to monitor compliance said that an internal audit team would be involved in checking for anti-bribery breaches; 58% said that an internal legal/compliance team would check for anti-bribery breaches.

The proportion of respondents that indicated that an external team of auditors or lawyers would monitor their company's compliance with ABC policies and procedures was much lower. Of those respondents that indicated that their company attempts to monitor compliance, 26% indicated that an external team of auditors carries out checks for anti-bribery breaches while 11% indicated that an external team of lawyers would provide this function. It seems likely that only larger companies would have access to external teams of lawyers or auditors, given the costs involved in contracting external expertise. Interestingly, one of the comments made by a respondent who selected 'other' was that there would be an 'annual signing of the ABC policy'. This symbolic and ritualistic process may encourage compliant behaviour within organisations, given employees actively, rather than passively, engage with the ABC agenda. However, as a means of ensuring ABC compliance it is not sufficient to base the monitoring solely on employees' 'statements' without third-party verification of compliance staff, auditors or external consultants. These provide an independent assessment of the level of compliance as well as potential action-plans to correct any deficiencies.

**Chart 12**  
How often does your organisation attempt to monitor compliance with ABC policies and procedures?



**Chart 13**  
In which of the following ways does your organisation attempt to monitor compliance with ABC policies and procedures?



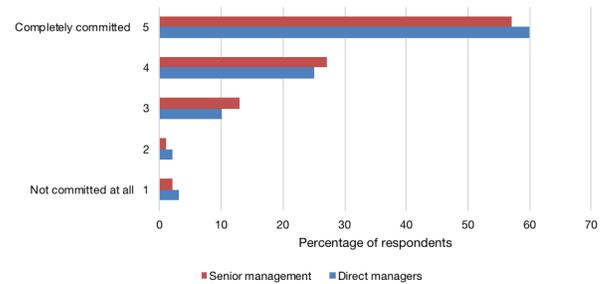
### 1.6 Management commitment to / support for ABC

Respondents were asked how committed they felt the senior management in their companies and their direct managers were to anti-bribery and corruption (Chart 14). They were asked to evaluate this commitment on a scale of 1 to 5, where 1 = not committed at all and 5 = completely committed. Our respondents indicated that the senior management and direct managers in their companies were mostly completely committed to ABC. This is a good sign given the significance of the 'tone from the top' in generating corporate cultures that clearly and consistently challenge bribery and corruption.

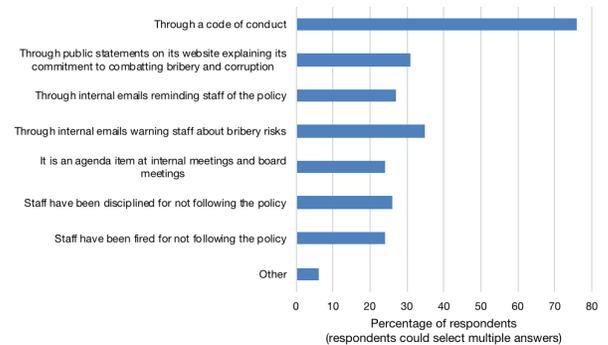
To follow up, respondents were asked about the ways in which senior management approached anti-bribery and corruption in their company (Chart 15). Primarily, respondents indicated that senior management approached ABC through putting in place a code of conduct, with over three-quarters of respondents selecting this option. Beyond this approach, senior management adopts a range of responses in practice to communicate their commitment to ABC compliance. These include messages addressed to both external (e.g. statements on the company website) and internal stakeholders (e.g. messages and warnings on ABC compliance sent out to staff and ABC topics as Board-level items for discussion). In fewer cases, senior management conveys ABC commitment through disciplining noncompliant staff – either through internal company procedures or through firing them. Respondents who selected 'other' highlighted online training and testing (4 respondents) and through a Managers' Conference (1 respondent). Only a very small number (6 respondents) stated that there was no approach by senior management to anti-bribery and corruption within their company.

Respondents were also asked whether senior management supported and reinforced anti-bribery and corruption initiatives introduced by the compliance team (Chart 16). The majority of respondents (72%) stated that they did. Overall, the findings indicate that there is a range of activities that senior management can adopt that convey their commitment to ABC compliance – the companies with 'best practice' are likely to be the ones that employ most or all of these approaches.

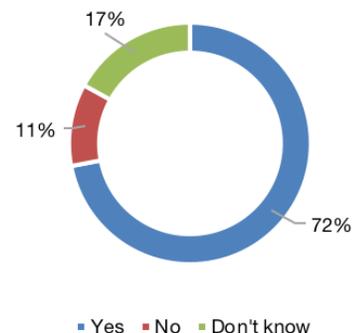
**Chart 14**  
How committed are senior management and your direct manager(s) to ABC?



**Chart 15**  
In which of the following ways does senior management approach anti-bribery and corruption?



**Chart 16**  
Does senior management support and reinforce anti-bribery and corruption initiatives introduced by the compliance team?



### 1.7 Reporting bribery

Previous survey research has shown that self-reporting of instances of bribery is the most common method through which law enforcement detects corruption. For example, the survey conducted for the OECD Report, found that two thirds of all instances of bribery that come to the attention of law enforcement are made through self-reporting. In addition, in a survey of over 400 companies, the US Security Exchange Commission (SEC) found that most of the companies voluntarily reported paying out well in excess of \$300 million in corporate funds to foreign government officials, politicians, and political parties. These corporations have included some of the largest and most widely held public companies and over 117 of them rank in the top Fortune 500 industries<sup>9</sup>.

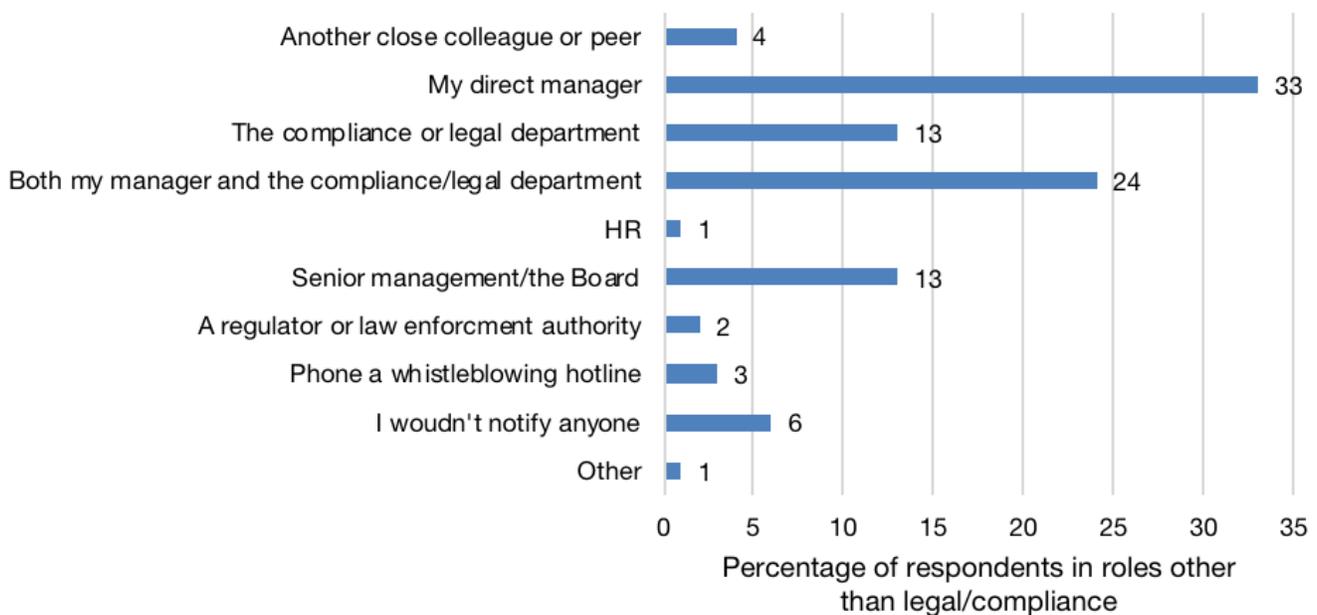
While these surveys reveal insights on company-regulator reporting relationships, we aimed to explore how internal reporting processes operate – a relatively unknown issue. We therefore asked questions specifically on who would the respondent notify first in various scenarios when bribery was paid. Respondents in roles other than legal or compliance

roles were asked about who they would notify in the first instance if they suspected a bribe had been paid by one of their co-workers or had been paid or authorised by their direct manager (Chart 17 & 18).

Respondents indicated that if they suspected a bribe had been paid by one of their co-workers, in the first instance they would be most inclined to raise the issue with their direct manager (33%) or both their manager and the compliance/legal function (24%), rather than with a peer (4%) or a regulator (2%), for example. This is an important insight into how employees would respond as their first point of contact for reporting is more likely to be their direct manager, rather than a senior manager.

While the previous section outlined the importance of the ‘tone from the top’ in terms of framing the ABC policies and cultures within the organisation, it might be argued that in operationalising these policies it is the ‘tone from the middle’ that is central to the ABC response. The relationships that employees have with their immediate managers are key to ABC. It is the nature of these interactions between employees and direct managers (i.e. how frequently they

Chart 17  
Who would you notify in the first instance if you suspect a bribe has been paid by one of your co-workers?



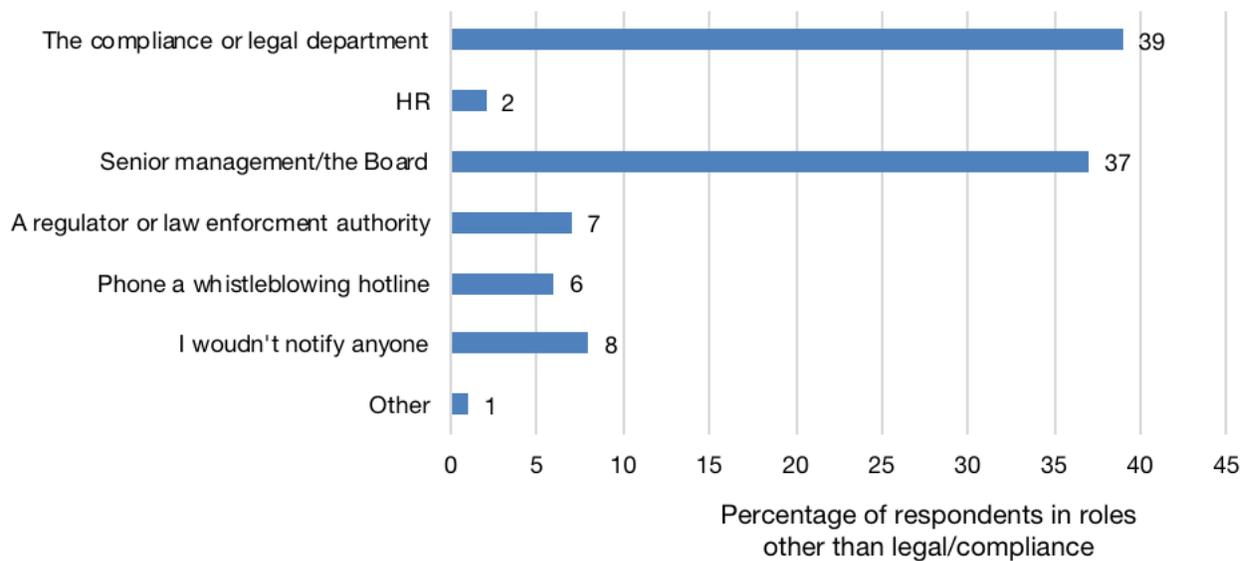
interact, the duration of these interactions, the intensity of these interactions, the priority of these interactions) that dictate employee behaviour. In other words, employees can associate with their direct managers in different ways, but these associations have a symbolic meaning as ways of behaving and thinking are learned in this way. How employees are socialised into corporate environments determines the motives, attitudes and rationalisations they develop. As direct managers are the first point of contact within the organisation, these relationships are fundamental to engendering pro-social, ethical working environments. However, while these relationships are key, it is important that direct managers will do something with this information when this happens.

In general terms, we can also see that reporting is more likely to be internal than external. This is a good indicator of functioning internal compliance systems, as it is important for any suspected bribery to be raised internally in the first instance. A preference for immediately notifying the enforcement authorities, or other external actors, would indicate a lack of trust or confidence in the internal reporting mechanisms. However, 6% also indicated that they would not notify anyone. It is important for businesses to ensure that their employees know to report suspected bribery internally.

If it were the respondent's manager that was implicated in the bribery, reporting again remains internal, but respondents are more likely to notify the compliance or legal department (39%) or the senior management/the Board (37%). The respondents that selected 'senior management/the Board' as the first point of notification did not commonly come from companies that do not have compliance team or have a small compliance team. While 24 respondents (36%) had no compliance officer or team to turn to, or didn't know if they do, the rest (64%) either had a single compliance officer or a compliance team of at least two people, with eight (12%) having a compliance team of over 50 people.

As with Chart 17, this preference for internal reporting in the first instance is an indicator of trust and confidence within the organisation, its compliance function and/or its senior management. However, 8% of respondents indicated they would not notify anyone in this scenario.

*Chart 18*  
Who would you notify in the first instance if you suspect a bribe has been paid or authorised by your direct manager?



### 1.8 Detecting bribery

Issues of capable guardianship are crucial in preventing bribery opportunities being acted on in the business context. In the literature, capable guardians are defined as the actor or mechanism that can disrupt, either directly or indirectly, the ability of a motivated offender to engage with an opportunity for crime, in this case bribery. Capable guardians here include the company's own compliance policies and oversight, and a range of third parties with some stake in the oversight and control of business transactions, and with certain responsibilities in detecting suspicious activities. In this question we explored the relative roles of a range of internal and external actors in detecting bribery<sup>10</sup>. These insights enable a better understanding of the behaviour upon detecting an internal irregularity, and a better management of the relationship with guardians.

Chart 25 relates to the likelihood of members of certain groups within the organisation to detect bribes. Of our respondents,

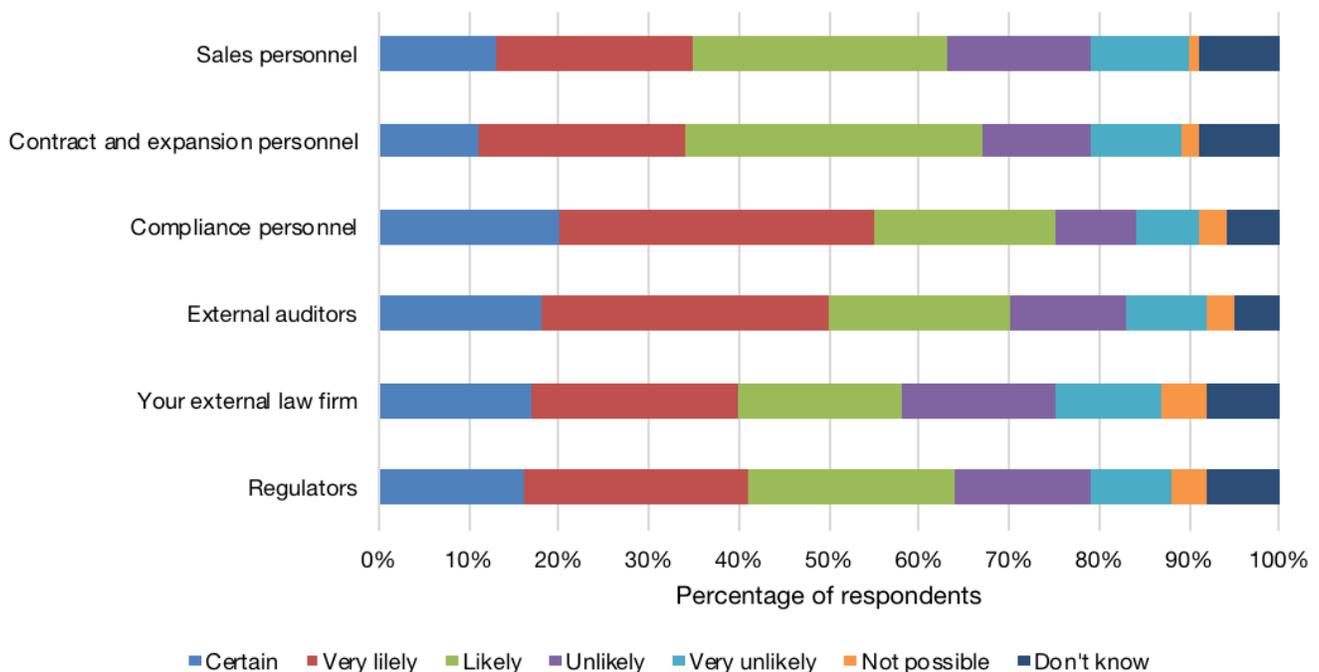
- 75% indicated that it is likely that compliance personnel would detect bribes
- 70% indicated that it is likely that external auditors would detect bribes

- 67% indicated that it is likely that contracts and expansion personnel would detect bribes
- 64% indicated that it is likely that regulators would detect bribes
- 62% indicated that it is likely that sales personnel would detect bribes
- 58% indicated that it is likely that their law firm would detect bribes

Our respondents indicated that they consider compliance personnel (75%) most likely to detect bribes within their organisation, followed by external auditors (70%) and contracts and expansion personnel (67%). The importance of external auditors and law firms in this context should be considered against the previous finding that many companies do not employ these external parties to conduct checks of ABC breaches. This further emphasises the importance of internal compliance staff as the main actors in detecting bribery and the need to invest into hiring adequate staff in these roles.

It can also be seen that, in general, the majority of respondents considered it likely that each of these groups would detect bribes in their organisation. This is noteworthy as perceptions of detection can be important in deterring corrupt behaviour, even if the reality of detection is different.

*Chart 19*  
How likely is it that members of the following groups would detect bribes?



### 1.9 Responding to bribery

Respondents were asked what they thought would happen to an employee at their company if they were to become involved in bribery (Chart 20). Three quarters of the respondents expected employees to face some kind of consequences for involvement in bribery. This is an encouraging number as it indicates that bribery breaches are commonly taken seriously by company management. However, the data show that, while the majority believe that employees would face consequences for becoming involved in bribery, 50 out of the 252 respondents (20%) believe they would get away with it, either because it would not be discovered (12%) or because management allows it (8%). 6% of our respondents think that the employee would be asked to stop but that no formal action would be taken.

Furthermore, we asked these respondents what kind of consequences the employee would face, should they be implicated in bribery (Chart 21). Of note is that 60 out of the 187 (32%) did not indicate that employees within their company would be dismissed for involvement in bribery, signalling that a bribery breach is not considered a serious enough cause for termination of employment. However, 75% did think that the employee would face investigation and potential disciplinary action by their company. Furthermore, 58% thought that the employee would face investigation and potential enforcement action by the authorities which indicates that there are perceptions of certainty of detection and reaction by formal enforcement bodies – indicated as an important deterrent in rational choice and deterrence theories of criminality. 22% felt that other companies would not want to do business with them or employ them meaning that some informal social control systems may also exist across industries.

However, 78% - nearly four out of five respondents - did not think they would face this consequence. This raises questions about the extent to which business actors implicated in bribery and corruption are able to move across companies. This may be because they do not need to disclose a bribery breach as a cause of termination of employment; because there may not be enough vetting procedures across companies; or, as the literature has shown, because the causes for dismissal or disciplinary action may be subject to a confidentiality agreement (if company systems and controls were also at fault). Further research is needed to tease out these variables and the extent to which companies vet new employees with regard to their ABC history.

*Chart 20*  
What do you think would happen to an employee at your company if they became involved in bribery?

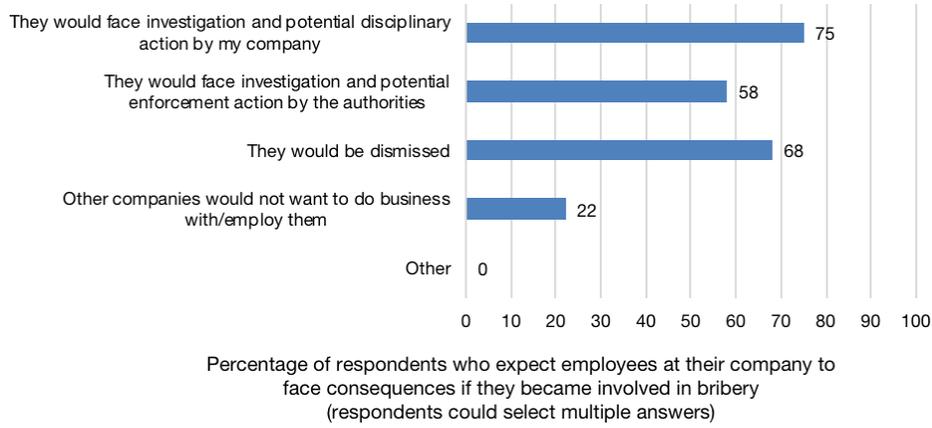


Respondents were also asked about how likely it was that someone would get away with paying a bribe on behalf of their company. The data in Chart 22 indicate that 30% of our respondents, almost one in three, considered it to be likely that the bribe payer would get away with this.

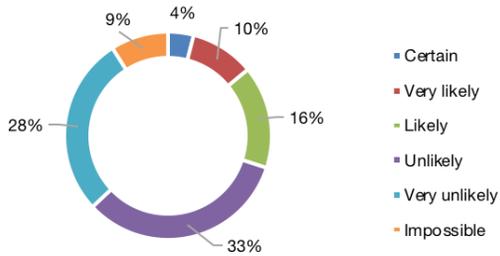
We further probed the respondents who answered that they considered it to be certain, very likely or likely, to determine why they thought it would be possible to get away with paying a bribe (Chart 23). Of these respondents, 25% indicated that this would be due to poor monitoring by direct managers, 18% because they felt that it is an accepted or tolerated practice in the industry, 16% because there is no real threat of enforcement action by a regulator, 13% because their company is very complex and difficult to monitor, and 9% because their anti-bribery compliance policies are not very clear.

These answers reveal a mix of factors internal and external to companies, including formal monitoring and sanctioning and more esoteric issues such as industry culture. This complicates approaches to remedying the situation, but also highlights certain possible approaches and guidelines: training of direct managers in proper monitoring of ABC compliance; simplifying the monitoring and escalation of decision-making (though companies may continue to be complex, the distribution of roles, responsibilities and lines of reporting regarding ABC monitoring can be simplified and made more focused); and paying more attention to clarify, simplify and make ABC compliance policies more accessible.

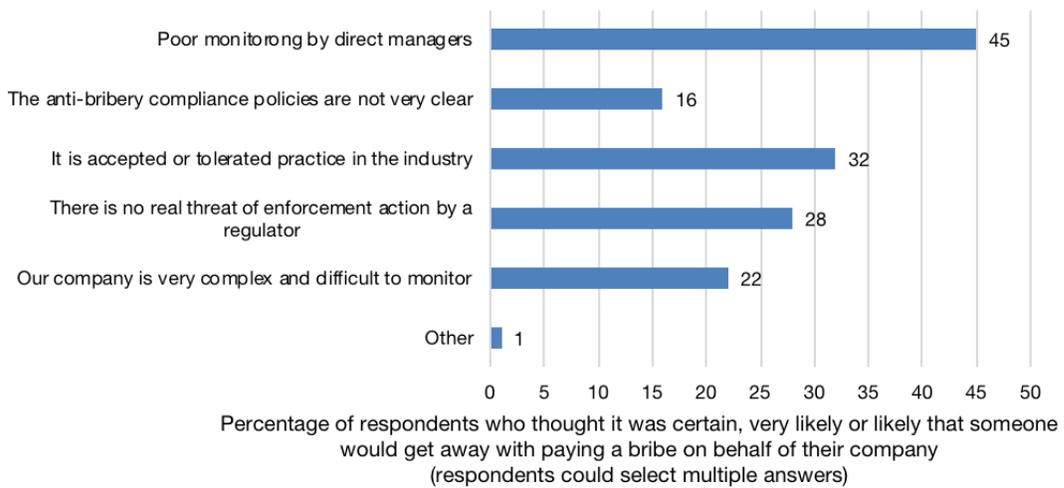
**Chart 21**  
*What consequences would they face?*



**Chart 22**  
*How likely is it that someone would get away with paying a bribe on behalf of your company?*



**Chart 23**  
*Why would they be able to get away with paying a bribe?*



Empirical understanding of the issues in this section has an increasing significance given recent legal developments. In several jurisdictions, offences now exist (either criminal or administrative) that directly correlate to whether a company possesses a culture of compliance. For instance, the UK adopts a criminal law approach as the Section 7 offence of the Bribery Act 2010 criminalises failures by commercial organisations to prevent bribery. The rationale for this offence was put forward by the Law Commission review into reforming bribery in 2008 where it was stated that ‘such failures...are a key factor in the perpetuation of the practice of bribery. This is especially (but not solely) the case when bribery takes place in environments where there is, or is believed to be, a “culture” of bribe-taking<sup>11</sup>. In another example, Germany has adopted a similar administrative offence since there is no corporate criminal responsibility for corruption and instances of bribery are tackled through administrative fines. Legal entities commit an administrative offence if the management has intentionally or negligently not adequately fulfilled supervisory measures that are necessary to prevent bribery by employees or agents of that company<sup>12</sup>. A company may be fined irrespective of whether or not an individual is held criminally liable thus showing the extensive reach of these provisions.

These legal developments have symbolic and practical importance. They foreground the culture of the corporation and shift focus onto the ‘organisational component’ that makes the bribery possible. Underpinning this is the need to understand (and change) the cognitive (i.e. how people think), affective (i.e. how people feel), and behavioural (i.e. how people act) responses of corporate actors towards opportunities for criminality within their operating contexts. For anti-bribery procedures to be ‘adequate’, we must understand these dynamics and how pro-corruption narratives are produced and reproduced.

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## 2. BRIBERY OPPORTUNITIES AND RISKS

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For bribery to occur, an opportunity must be present. However, it is not the mere presence of an opportunity that is important, but the particular characteristics of the opportunity; bribery in (international) business, like all forms of white-collar crime, has what is referred to as an ‘opportunity structure’<sup>13</sup>. This is a set of conditions or elements that must be in place in order for the bribery to take place. Different settings naturally create different opportunities that vary in accessibility and attractiveness to would-be-offenders.

Understanding the ‘opportunity structure’ is important for the implementation of robust and ‘adequate’ compliance procedures, in line with Section 7 of the Bribery Act 2010. For such procedures to have a reductive and/or preventative influence, we must understand and identify the opportunities for bribery and recognise the processes by which bribery opportunities are realised. This implies two analytically separable questions:

1. How does bribery occur? (crime – the specific event)
2. Why does bribery occur? (criminality – the underlying motivations and conditions)

In this section, we address how crime opportunities are formed by immediate environments and then discovered and evaluated by potential offenders. That is, how do those employees that are motivated to bribe come across opportunities and situations that are conducive to bribery, and to what extent is there a lack of credible oversight at any given time and in any given place. For instance, much research has indicated that gaps sometimes exist in business between the official and expected ways of behaving in line with public normative standards (i.e. the myth system) and the shadow norms, values and rules that tolerate bribery (i.e. the operational code)<sup>14</sup>. Bribery within business may simultaneously be ‘normal’ (i.e. a rational response to the strains/pressures of business) and ‘deviant’ in that it violates formal norms, laws and regulations. Thus, the understanding of patterns of behaviour that may indicate likely areas of corruption is beneficial for the development of ABC policies and procedures.

Criminological research informs us that criminals become

aware of opportunities as they engage in their normal, routine business activities, and come across those who expect bribes, or are willing to receive bribes, in familiar business practices. This is important because bribery is reliant on legitimate business practices, as bribes can be conveniently concealed behind the otherwise legitimate occupational behaviours of the bribers’ occupations. This makes both detection and proof to a criminal standard of certainty difficult for regulators and compliance actors and for the criminal courts. Understanding how opportunities emerge in this way has implications for ‘adequate procedures’ in terms of how would-be ‘bribers’ gain access to bribery opportunities and confront problems of gaining finance, gaining access to foreign officials, and so on.

In this section we place attention not on the incidence or occurrence of ‘actual’ bribery within business, but on better understanding the conditions that create the ‘potential’ for bribery to take place, that is, the ‘causal potential.’ The absence of actual bribery is not an indicator of future behaviours, thus any robust and systematic approach to the implementation of ‘adequate procedures’ must be based on an understanding of how opportunities for bribery emerge and the underlying generative conditions that create these. It is an understanding of the latter that can inform forward-looking and preventative procedures.

## 2.1 Opportunities for bribery

The questions in this section were directed to all participants in the sample, yet they were adapted to the particularities of those working in legal or compliance roles and those working in any other roles within the organisation – for example, sales, marketing, business development, procurement, accounting (see Methodology section for all the roles represented by the respondent group).

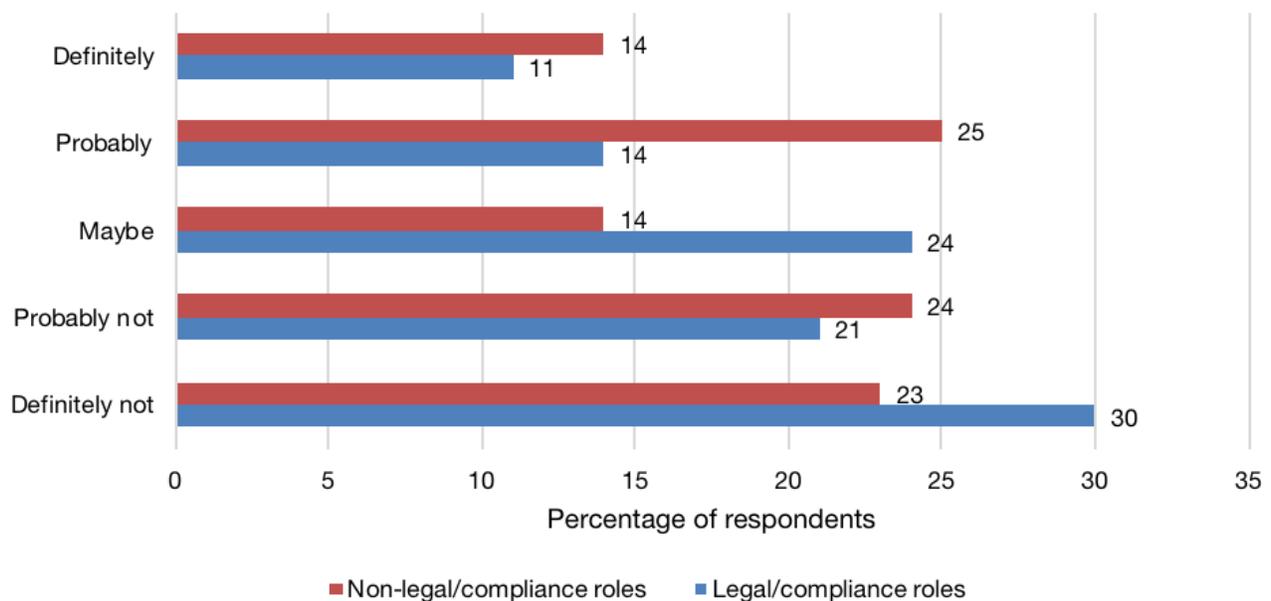
Respondents in legal/compliance roles were asked whether they thought it would be possible for someone in their company to offer a bribe to a public official to obtain/retain preferential treatment. Respondents in non-legal/compliance roles were asked whether they thought it would be possible for someone in their role to offer such bribes (Chart 24).

39% of those respondents in non-legal/compliance roles (i.e. sales, marketing etc.) indicated that they thought it would definitely or probably be possible for someone in their role to offer a bribe to a public official for preferential treatment. That is, almost two out of five respondents in these positions recognise opportunities for bribery in the course of their roles. This indicates that conducive structures for bribery exist across businesses.

In contrast, 25% of those in legal/compliance roles indicated that they thought it would definitely or probably be possible for someone in their company to offer a bribe to a public official for preferential treatment. While these two sets of respondents are not directly comparable in terms of their companies, in that there is no way for us to establish whether they work for the same company, these data indicate that those in non-legal/compliance roles generally consider it to be more possible for opportunities for bribing to be recognised. This perhaps reflects how well these actors have access to knowledge on opportunities for bribery in the course of their job role, while those that work in legal/compliance do not necessarily possess such knowledge.

Focused research would be needed to directly compare this within organisations – and this would be an important area to explore: the difference in the perception of the existence/nature of opportunities for bribery between staff in roles where those opportunities could present themselves and staff in compliance roles.

*Chart 24*  
Would it be possible for someone in your company or role to offer a bribe to a public official to obtain/retain preferential treatment?

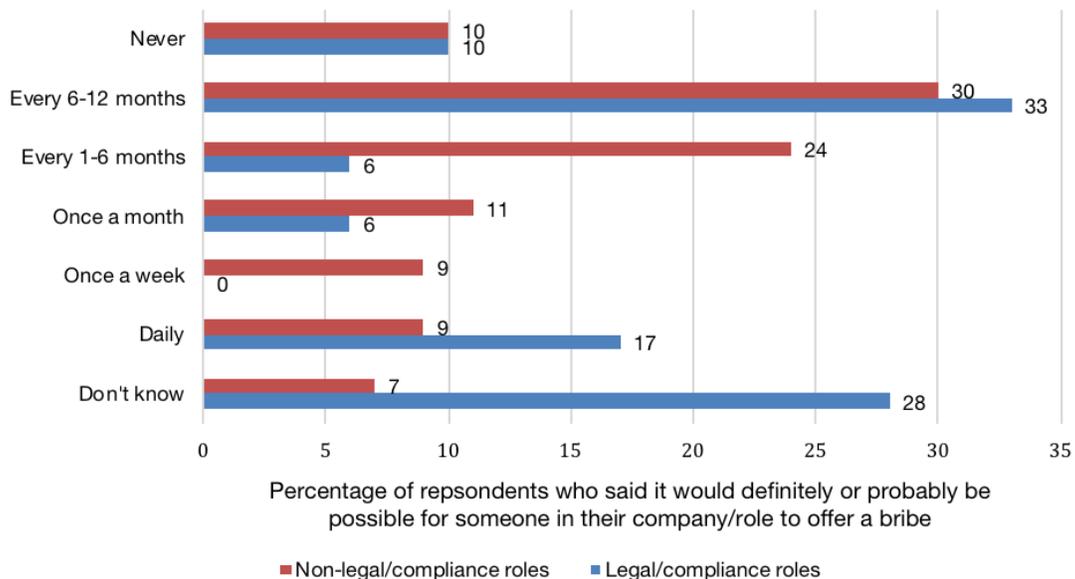


To explore the dynamics of bribery opportunities further, those who answered 'definitely' or 'probably' to this question were asked how regularly they would encounter such opportunities and in what situations they would arise (Charts 25 and 26). Most respondents in both non-legal/compliance (30%) and legal/compliance (33%) roles believe opportunities to offer a bribe are encountered every 6-12 months. However, some of our respondents indicated that such opportunities can arise on a more regular basis, and even daily. The poorer understanding by legal/compliance respondents of opportunities for bribery in comparison to respondents in non-legal/compliance roles is also indicated by the response of these actors to how regularly such opportunities emerge as 28% of this category selected 'don't know'. It is worth exploring further whether those working in compliance functions require a better understanding of the day-to-day activities of company employees in order to provide more effective compliance geared towards reducing opportunities for bribery.

that these opportunities arise routinely during existing business relationships. This is an important finding as it reinforces that bribery does not take place outside of 'normal business practice', but is more likely to occur due to opportunities that arise as part of the daily activities of business actors.

When we further probed our respondents to gain insights into when employees in their role would encounter opportunities to bribe, 40% of those in non-legal/compliance roles and 50% of those in legal/compliance roles indicated

*Chart 25*  
How regularly would someone in your role or company encounter opportunities to offer a bribe?

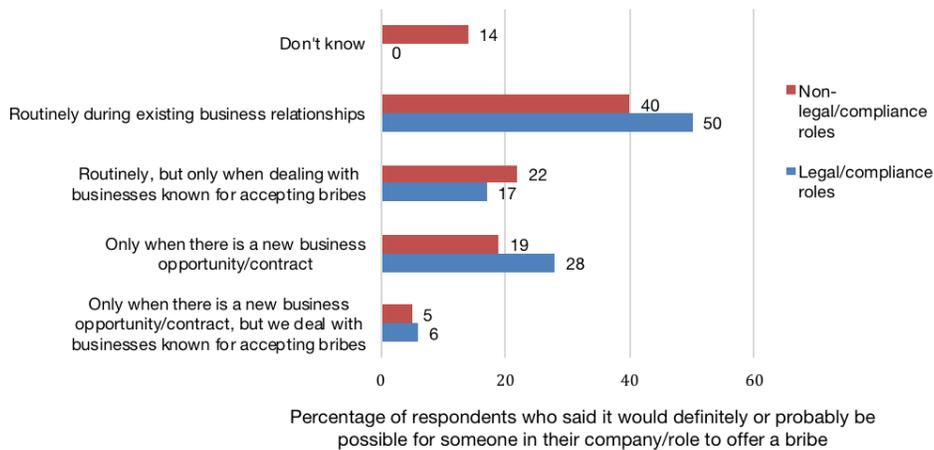


We then asked respondents to assess to what extent they agreed or disagreed with a number of statements that were designed to explore their understanding of, and views on, how bribery is carried out. Chart 27 shows the answers for those in non-legal/compliance roles who said that it would definitely or probably be possible to offer a bribe in their role. As can be seen, 83% of these respondents agreed that someone in their role would possess the knowledge of how to make a bribe; 59% agreed that the process of giving a bribe involves well-known, common business practices; 56% agreed that a bribe would be easily concealed behind the

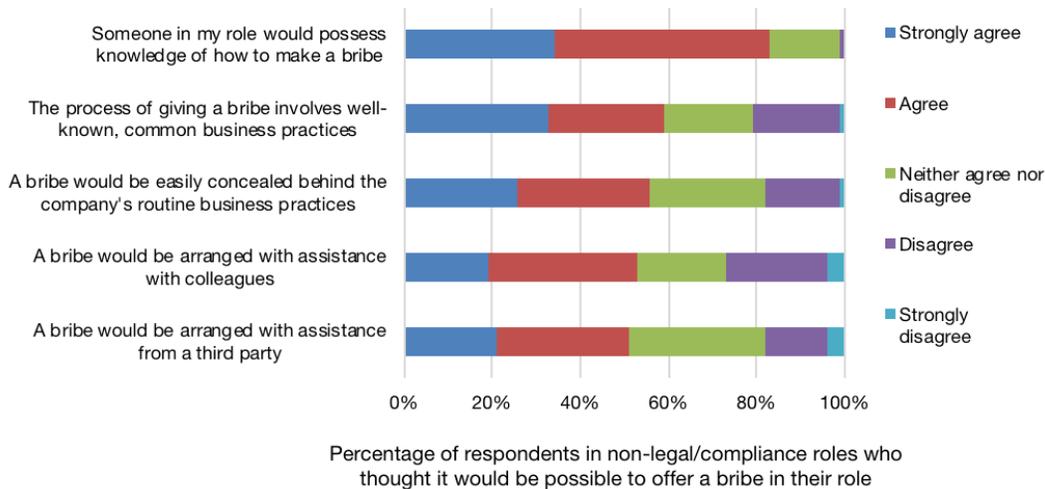
company's routine business practices; 53% agreed that a bribe would be arranged with the assistance of colleagues; and 51% agreed that a bribe would be arranged with assistance from a third party.

In terms of the 'opportunity structures', we can see that a set of conditions exist that create potential for bribery to take place in business. For instance, those business actors that encounter opportunities to bribe as part of their routine duties are also likely to possess the required knowledge, expertise and social networks for arranging the bribery.

*Chart 26*  
When would someone in your role or company encounter opportunities to offer a bribe?



*Chart 27*  
To what extent do you agree or disagree with the following statements?

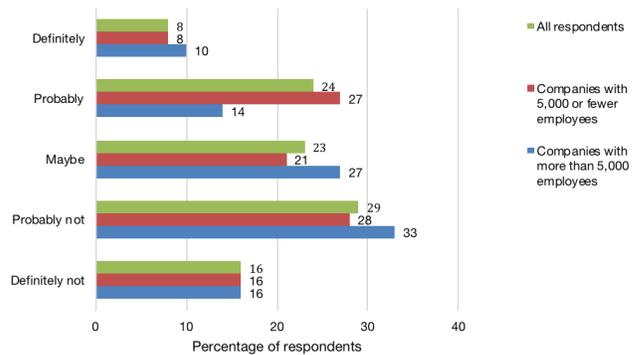


Building further on Chart 27, all respondents were asked whether they thought a bribe could be easily concealed within their company. Chart 28 shows the answers for all respondents, for those in companies with 5,000 or fewer employees, and for those in companies with more than 5,000 employees.

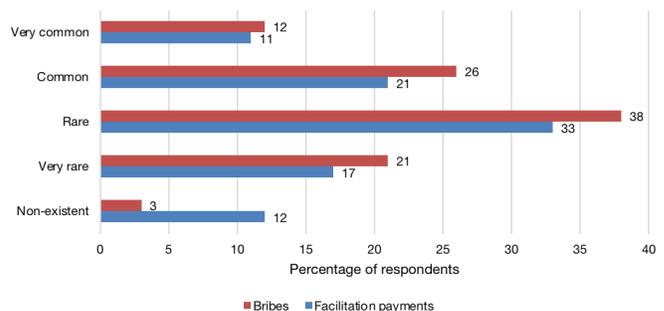
32% of all our respondents think that a bribe could definitely or probably be concealed within their company with ease. This in itself is a substantial number. If we break the respondents down by company size then we can see that in companies with 5000 or fewer employees 35% of respondents believe that a bribe could definitely or probably be concealed within their company with ease; while in companies with more than 5000 employees, 24% of the respondents think that a bribe could definitely or probably be concealed within their company with ease. Therefore, respondents in smaller companies are more likely to think that a bribe could be easily concealed than those in larger companies. While companies with more than 5000 employees may also by definition be more complex in terms of structure, with more opportunities to conceal a bribe, these companies may also have more developed monitoring systems that make concealment more challenging.

Respondents were also asked how common they thought bribes and facilitation payments were in their industry (Chart 29). The majority of respondents thought that bribes and facilitation payments were rare or very rare in their industry. However, a substantial proportion perceived both bribery and facilitation payments to be commonplace: 38% of respondents think bribes are commonplace within their industry and 32% think facilitations payments are common in their industry. The respondents who thought bribes were rare, very rare or non-existent, were then asked why they thought this was the case (Chart 30). The primary reason given was that involvement in bribery allegations would threaten the company's reputation (53%). These respondents also indicated further reasons for their opinion: companies have improved their compliance systems and controls (47%), the industry recognises bribery is wrong (45%), and bribery is more likely to be discovered (45%). Preventing employees acting upon bribery opportunities is therefore premised upon a mix of company-level and industry-level factors. While changing perceptions in the industry may be beyond the capabilities of individual companies within them, resources should be targeted at the company-level in improving compliance systems and increasing perceptions of negative reputational costs and likely discovery of noncompliance.

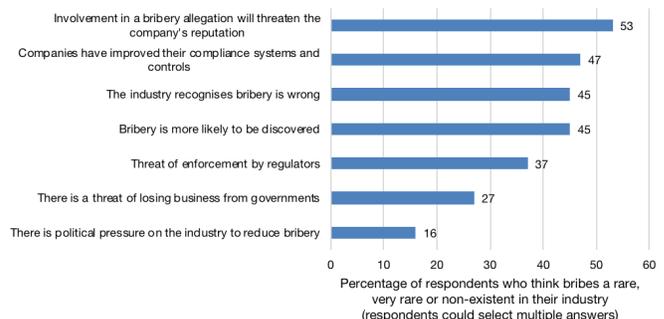
**Chart 28**  
Do you think a bribe could be easily concealed within your company?



**Chart 29**  
How commonplace do you think bribes/facilitation payments are in your industry?



**Chart 30**  
Why do you think bribes are rare or non-existent in your industry?



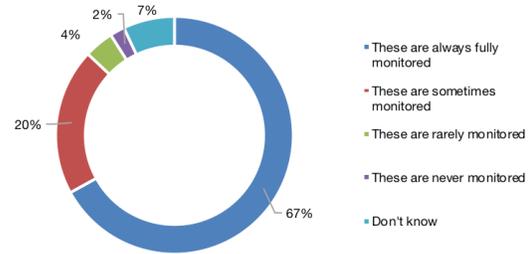
## 2.2 Bribery risk

Respondents were asked to assess the level at which different factors presented a bribery risk to their company, ranking the risk from 0 to 10, where 0 = no risk and 10 = very high risk. Chart 31 illustrates the mean score each factor was given by the respondents and the range of scores given<sup>15</sup>. Respondents indicated that working in countries where bribery is common presents the highest bribery risk to their company, followed by using agents or consultants and the use of corporate hospitality, gifts and entertainment. This finding corresponds with the extant literature and enforcement data on foreign bribery where we see local cultures, third parties and the ambiguity surrounding hospitality as concerns for business.

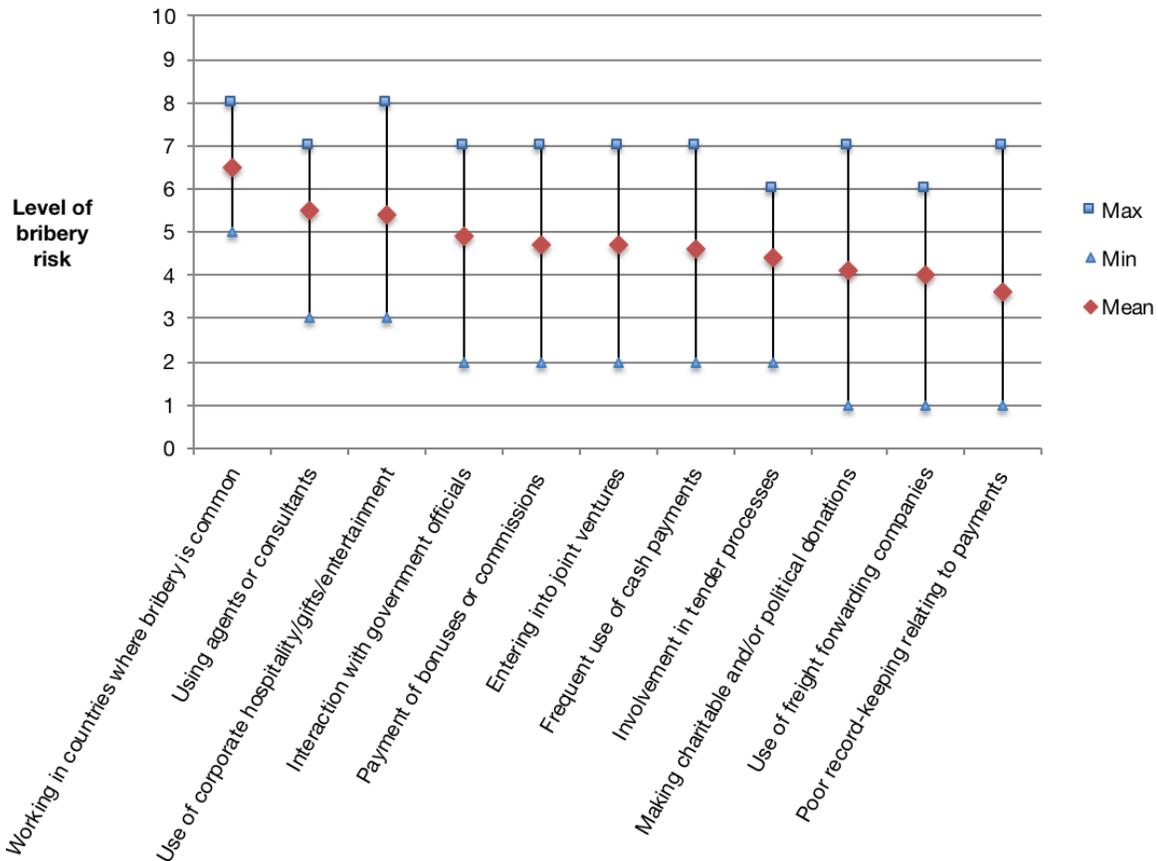
On the basis that large payments being made/received by companies could constitute a bribery risk, respondents were asked about the level of supervision over large payments

in their company (Chart 32). A substantial majority of respondents (87%) believe that such payments are always fully (67%) or sometimes (20%) monitored. This is an example of good corporate practice in terms of internal ABC compliance provisions.

*Chart 32*  
How much supervision is there over large payments being made/received by your company?



*Chart 31*  
To what extent do you think the following present a bribery risk to your company?



### 2.3 Attitudes to bribery

Respondents were asked whether they thought that businesses that paid bribes within their industry sector would gain a commercial advantage (Chart 33). Interestingly, the responses were relatively evenly split between yes (39%), no (35%) and 'don't know' (26%). This indicates a lack of common understanding over whether bribes equate to commercial advantages in their industries. However, if we break these data down by industry sector, we can see that three industry sectors had a higher percentage of 'yes' answers to this question: construction, pharmaceuticals/healthcare and real estate<sup>16</sup>.

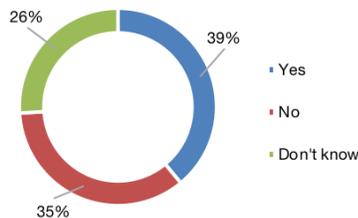
Respondents were then asked whether they thought that people who paid bribes on behalf of their company could personally benefit (Chart 34). Almost half of our respondents (48%) indicated that they thought that those people who pay bribes on behalf of a company could also benefit personally.

Those respondents who believed that a personal benefit was possible were asked what form such a benefit could take (Chart 35). Of note here is that 64% of these respondents think that individuals that pay bribes on behalf of the company would be given special status following their success in bringing in contracts. In addition, 60% think that these individuals would be promoted for meeting the company targets. A number of the respondents who

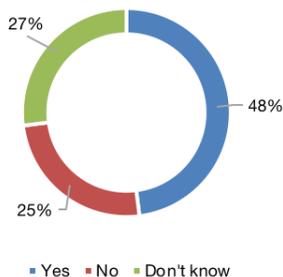
selected 'other' highlighted the financial benefits that could be gained by individuals that pay bribes, for example earning 'more commission' or 'bigger bonuses', receiving 'kickbacks' or 'side money', or getting 'their fee as a remuneration under agency agreements'. This is an important finding since it shows how individuals may be motivated to act upon bribery opportunities due to the complex interaction between company-level and individual-level benefits. Paying bribes improves both company and individual performance targets. A recommendation would be that procedures should be instilled internally for better due diligence and more extensive scrutiny of how certain individuals achieve these targets. Successful contracts, especially in larger sums or in difficult business and industry circumstances should be subjected to some form of internal review for impropriety.

Finally, respondents were asked about their personal attitudes to bribery (Chart 36). An overwhelming majority (80%) believe that it is never acceptable to bribe. However, although a small proportion, it is interesting to note that some respondents believe that it is always acceptable to bribe (3%), or that it can be acceptable if it helps get new business (6%), or that it is not acceptable but cannot be avoided (11%).

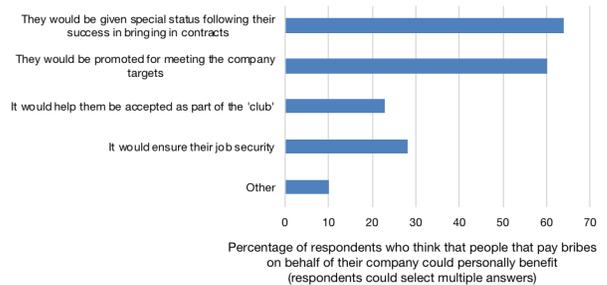
**Chart 33**  
Do you think that businesses that pay bribes have a commercial advantage in your industry?



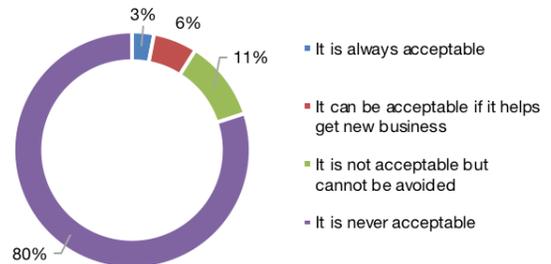
**Chart 34**  
Could people that pay bribes on behalf of the company personally benefit?



**Chart 35**  
In what ways do you think individuals that pay bribes on behalf of the company could personally benefit?



**Chart 36**  
What is your personal attitude towards bribery?



## 3. THIRD PARTIES

It is now recognised that the use of third parties is a common feature in many cases of foreign bribery. For instance, an OECD report based on an analysis of all enforcement data in relation to the Anti-Bribery Convention 1998 indicated that intermediaries, or third-parties, were involved in three out of four bribery cases<sup>17</sup>. These intermediaries take many forms, such as local agents or corporate vehicles and subsidiary companies. The importance of third parties as intermediaries in foreign bribery is related to multiple factors: for many companies that wish to penetrate a new foreign market, it will be necessary to engage local partners that have access to local business opportunities. Further, in some industries, the business model of the company is predicated upon employing third parties. For example, in the wholesale insurance sector, the retention of new business is commonly devolved to local agents that then seek out insurance contracts with locally-based businesses. This is a cheaper method of conducting business. The necessity and profitability of using third parties poses significant bribery risks.

In this part of the survey, we explored the extent of exposure to, and ways of dealing with, the bribery risks associated with using third parties. We asked our respondents if they were involved with engaging third parties, with three possible answers:

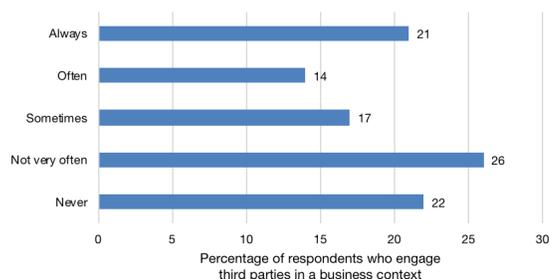
- No: 79 (31%)
- Yes, in a business context: 116 (46%)
- Yes, in a legal/compliance context: 57 (23%)

Those that are involved with engaging third parties in some way were then asked a series of related follow up questions, with different questions for those involved in a business context and those involved in a legal/compliance context.

### 3.1 Risks of using third parties

Respondents involved in engaging third parties in a business context were asked questions about the risks posed by third parties in relation to bribery, and what they did to mitigate these risks. 60 of the 116 (52%) respondents involved in engaging third parties in a business context think about bribery risk when doing so at least sometimes (Chart 37).

*Chart 37*  
Do you think about bribery risk when engaging third parties?



However, 48% of respondents involved in engaging third parties in a business context do not often or never think about bribery risk when doing so – this shows a lack of understanding of the risks associated with third parties. This finding contradicts the previously outlined finding that the respondents considered the engagement of third parties to be the second most significant bribery risk to the company. This means that while there may be a general understanding that using agents or consultants poses bribery risks, in practice, company insiders do not always check for bribery risks in specific cases of engaging them. Furthermore, there is a slight discrepancy between those in a compliance/legal role and those in sales or other business roles in how they assessed this question. The first group (legal/compliance roles) gave a median score of 5.3 on the risks of engaging third parties, while the second group (business roles) gave a median of 4.3. Though the difference is small in relative numbers, the finding still indicates that those in a compliance role (i.e. who did not answer the question on whether they thought of bribery risks in engaging third parties) understand and give more weight to such risks. There should be a focus on developing internal company procedures to bridge this gap and target the policies and guidance on third party risks to the most critical areas of the company structure.

Those respondents that answered Always, Often or Sometimes as the rate of frequency at which they think of bribery risks when engaging third parties, were then asked to rank different factors in the order of importance in influencing their decision to check third parties. The overall rank they were given was:

1. The third party is based in or will be operating in a high risk country
2. You have a suspicion that the third party might pay bribes
3. You have seen or heard about allegations of bribery with this third party
4. The third party is a type of organisation that is known to present a bribery risk

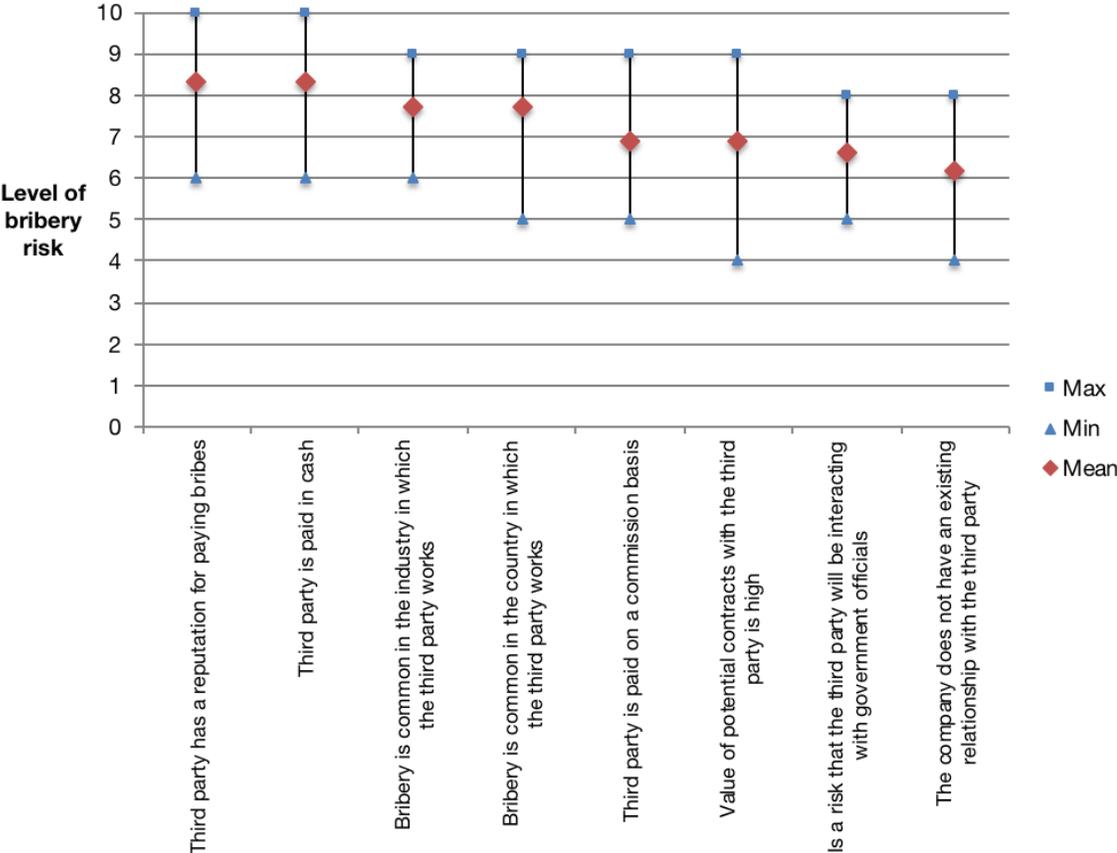
As with Chart 31, we see here that the defining factor as to whether to check a third party is whether the country was assessed as high risk in terms of bribery.

Respondents who are involved in engaging third parties in a

business context were asked to assess the extent to which certain factors pose a bribery risk to their company, ranking the risk from 0 to 10, where 0 = no risk and 10 = very high risk (Chart 38). Chart 38 shows the mean score each factor was given by the respondents and the range of scores given<sup>18</sup>.

In Chart 38 we see that respondents considered those third parties with a reputation for paying bribes as well as third parties that are paid in cash as posing the highest risk. While all the factors were ranked as posing a high risk, at the lower end respondents indicated that not having an existing relationship is considered the lowest risk. This finding suggests a need to emphasise the importance of conducting due diligence when starting a new business relationship with a third party. If the company does not have an already existing relationship with the third party, and due diligence has not already been conducted, this should caution towards being more critical of that new relationship as a potential bribery risk.

*Chart 38*  
To what extent do you think the following pose a bribery risk for your company when engaging third parties?

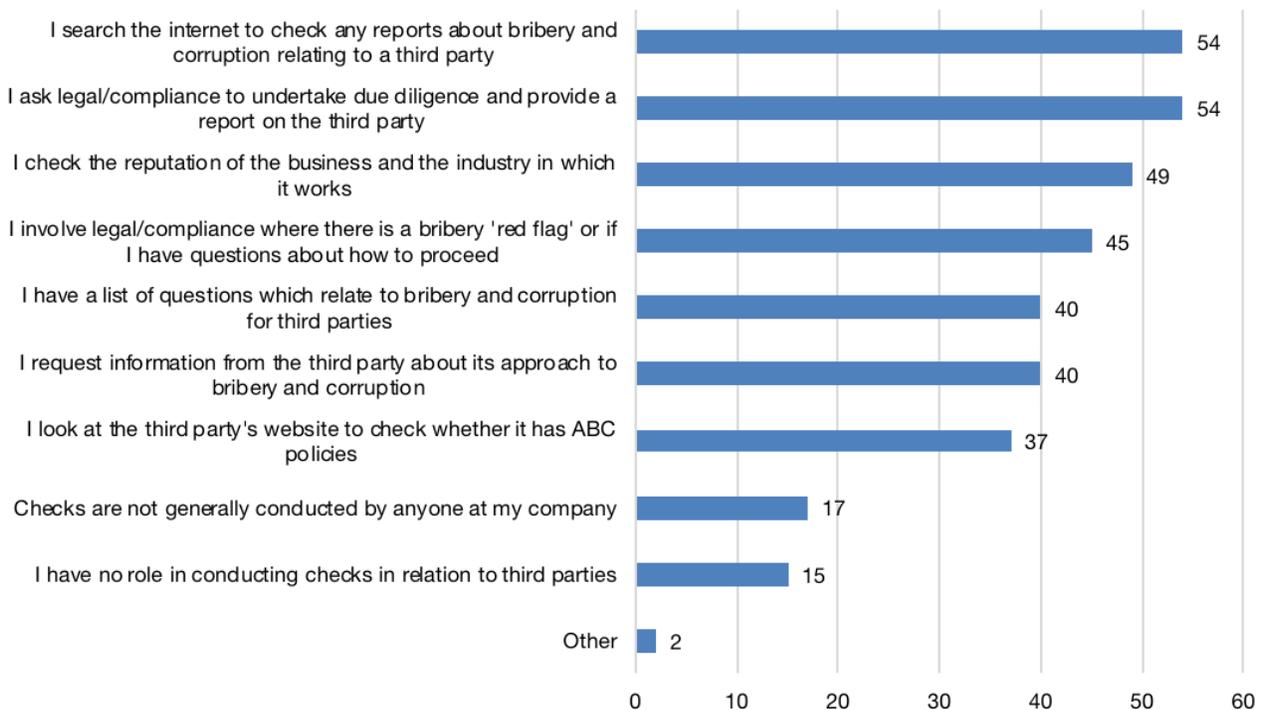


### 3.2 Procedures related to the use of third parties

The respondents who are involved in engaging third parties in a business context, and who consider the risks from third parties at least some of the time, were asked what checks they would make when considering engaging third parties (Chart 39). Most notably, our respondents indicated that searching the internet to check any reports about bribery and corruption relating to a third party (54%) and asking legal/compliance to undertake due diligence and provide a report on the third party (54%) are the most used checks. Respondents that stated that they had a list of questions that they ask, ask these questions either of every third party (76%) or just if there are any concerns (24%). Importantly, 40% of the respondents stated that they would request information from the third party on their approach to bribery and corruption. This can be considered good practice as it instils an active approach on behalf of company insiders in which third parties are probed about compliance in their own practices. However, this would not be enough, and

good practice would involve a combination of their own due diligence practices, and an additional layer of internal checks by the legal/compliance department. Worryingly, 17% of the respondents never conduct checks for bribery risks when engaging third parties. This should be considered an unacceptably high number, bearing in mind the extent of bribery risk posed by third parties. The situation could be remedied by introducing company policies and practices of compulsory checks, along the lines of those highlighted in Chart 39, in every circumstance of employing third parties, as well as organising training for staff to impart due diligence attitudes and skills.

*Chart 39*  
*What checks do you make when considering engaging a third party?*

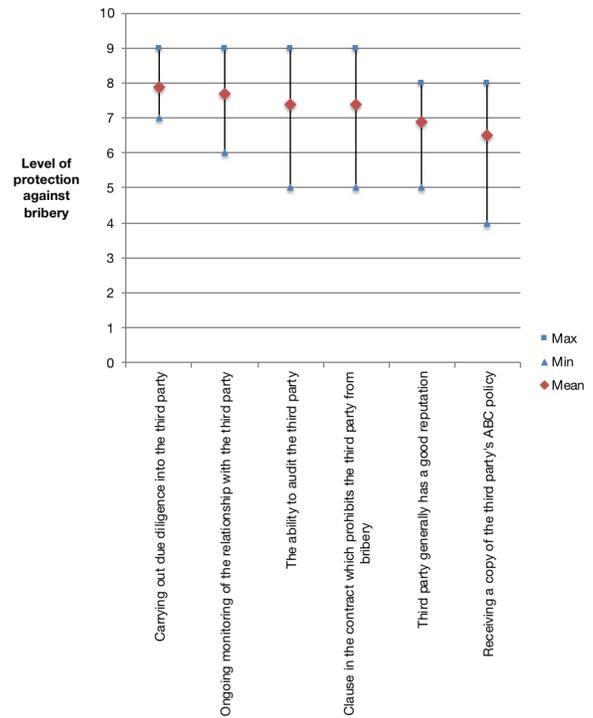


Respondents were then asked to what extent certain procedures or practices protect against bribery when engaging third parties, on a scale of 1 to 10, where 0 = no protection and 10 = maximum protection (Chart 40). Chart 40 shows the mean score each procedure/practice was given by the respondents and the range of scores given<sup>19</sup>.

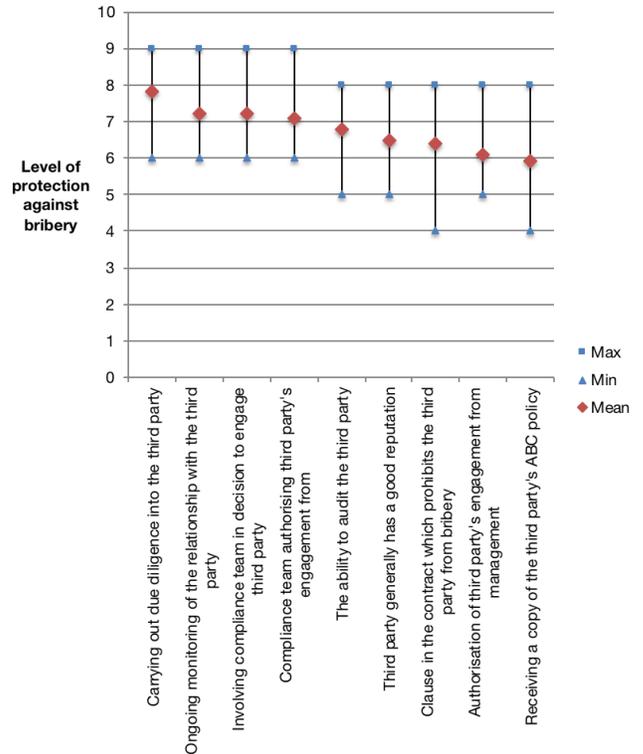
Our respondents indicated that carrying out due diligence into the third party was the mechanism that offered the highest level of protection against bribery. However, all mechanisms were considered of a relatively high level of protection.

Respondents who are involved in engaging third parties in a legal/compliance context were also asked to what extent certain procedures or practices protect against bribery, on the same scale as above (Chart 41). Chart 41 shows the mean score each procedure/practice was given by these respondents and the range of scores given<sup>20</sup>. As above, carrying out due diligence was considered to offer the highest level of protection although again, all mechanisms were rated as offering a high level of protection. This indicates that there is a need to employ a mix of methods of assessing and mitigating the risks posed by third parties. Again, the best practice would involve a combination of individual due diligence and the involvement of the compliance team at some stage of the proceedings – preferably throughout the process of decision-making though certainly at the point of authorisation. This would enable a second-tier scrutiny of the decision to employ the third-party by the compliance team.

**Chart 40**  
To what extent do you think the following protect against bribery?



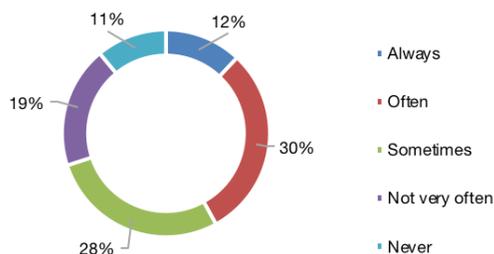
**Chart 41**  
To what extent do you think the following protect against bribery?



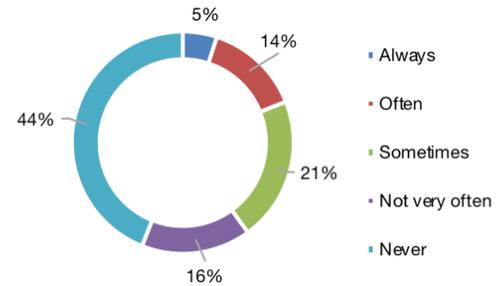
Charts 42 to 45 show the answers to questions asked of respondents who engage third parties in a legal/compliance context. As can be seen, 70% of respondents indicated that they are at least sometimes asked to advise on bribery and corruption risk when the company engages with a third party (Chart 42). This is an important finding as it shows business attitudes that recognise the role played by the compliance team in ensuring proper business operations. However, a substantial proportion of respondents (40%) also indicated that they at least sometimes feel under pressure to approve third party engagements despite ABC red flags. While the previous finding is encouraging, this may indicate that the extensive involvement of compliance may on occasion be merely 'cosmetic' rather than substantive. The finding calls for putting in place proper training procedures for staff in business roles that will increase their understanding of the role of compliance teams. Good practice would be also include ensuring that management sends out messages of support for the compliance team, as well as enabling easy and accessible reporting systems for compliance officers in cases where they feel under pressure – a type of a compliance 'whistleblowing' mechanism.

96% of respondents indicated that they think employees correctly follow due diligence procedures when engaging third parties. This is a positive perception that perhaps indicates good practice within these companies. Finally, 86% of these respondents indicated that they are at least 'satisfied' with the procedures currently in place for due diligence of third parties within their companies.

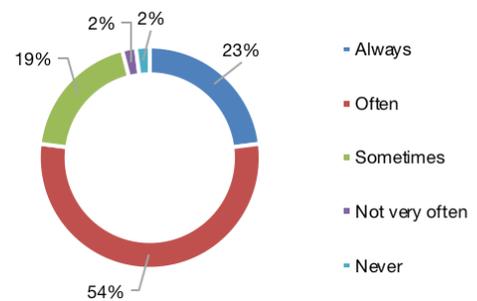
**Chart 42**  
How often are you asked to advise on bribery and corruption risk when the company engages a third party?



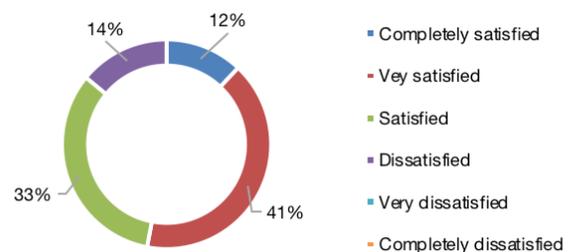
**Chart 43**  
How often do you feel under pressure to approve the engagement of a third party despite bribery and corruption red flags?



**Chart 44**  
Do you think employees correctly follow due diligence procedures when engaging third parties?



**Chart 45**  
How satisfied are you with the procedures currently in place for due diligence of third parties?



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# METHODOLOGY

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The survey was developed and conducted by members of the White & Case LLP White-Collar Crime team and researchers from the Centre for Criminology and Criminal Justice, University of Manchester. The research was carried out from March 2017 to January 2018 and it consisted of 3 phases:

### ***Phase 1: Planning and survey development***

The first 6 months of the project involved the development of an online questionnaire to be distributed to potential respondents working in multinational businesses, in a range of industry sectors, anywhere in the world. The survey was developed through collaboration between White & Case LLP and researchers from the University of Manchester, and feedback was provided on early versions of the questionnaire by academics with expertise on bribery and corruption or survey research methods, and White & Case LLP global partners. In addition, a pilot survey was conducted with 16 respondents in July 2017 and the responses and feedback on the questionnaire were used to develop the final version.

### ***Phase 2: Data collection***

The survey was launched on the 4th September 2017 and data was collected over the following three months. The survey was distributed to potential respondents via a number of different methods: direct email contact to relevant companies; social media campaign; promotion at relevant conferences and events; use of panel data company to target relevant respondents.

### ***Phase 3: Analysis and write-up***

The final stage of the project involved analysis of the quantitative survey data and the production of this report.

### ***The Survey***

The online survey consisted of 82 questions in total. However, the survey was designed so that it could be completed by individuals in different organisational roles and with different experiences regarding the questions (for example, some questions asked an initial yes/no answer. This would then be followed by a question). Therefore, respondents did not answer all 82 questions; the questionnaire adapted to each respondent based on their answers to particular questions.

The scope of the survey was kept broad and inclusive, allowing for respondents from a wide range of industry sectors (see Chart 57), with different roles, positions and responsibilities within their organisation (see Charts 53-56), and based and operating in any part of the world (see Charts 58-60). This ensured representation of a variety of businesses across a range of locations around the world, as well as the ability to make cross-comparisons across different sectors.

The survey was divided into 4 sections, aiming to gather information and perspectives on:

1. the respondent's role and experience, the nature of their organisation, and the market in which it operated;
2. anti-bribery policies and procedures within their organisation and industry;
3. bribery opportunities and risks within their organisation and industry; and
4. the role of third-parties in their business practices.

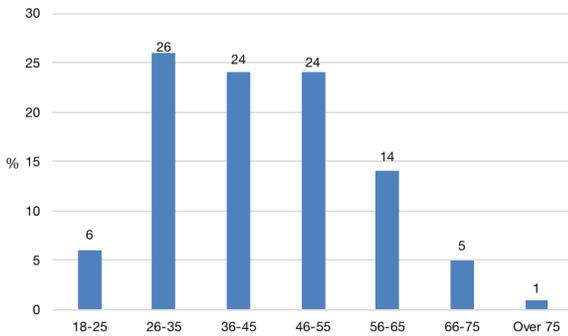
**The respondents**

The survey was completed by 252 respondents, 65% of whom were male and 34% female, covering a range of age groups.

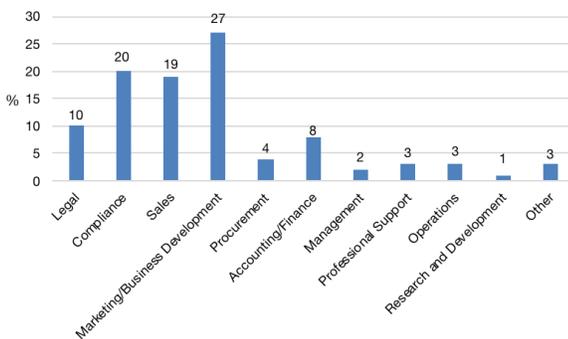
Respondents were asked to categorise their role and position within the company in a number of ways -primary responsibility; committees they sat on; length of time in organisation; management level.

As Chart 50 shows, the respondent group was divided between those who were at the senior management level (36%), middle-level management (39%), and those with no management responsibilities. The number of people who reported to them ranged from 0 to over 100, with a median number of direct reports of 4.

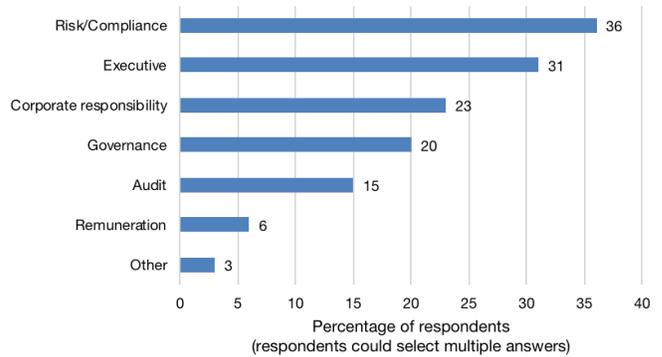
*Chart 46*  
Age



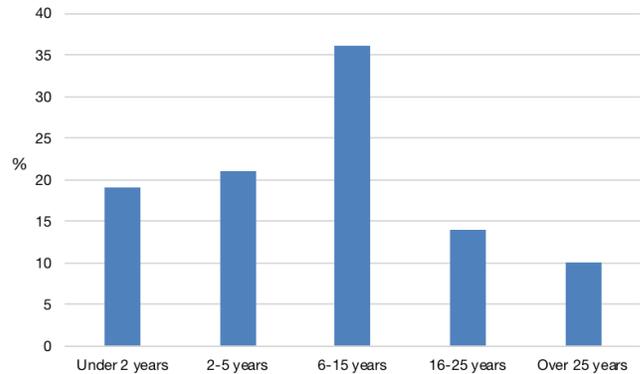
*Chart 47*  
What is your primary responsibility?



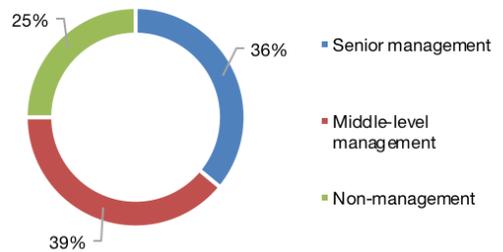
*Chart 48*  
Which committee(s) do you sit on?  
(\*Other\* committees highlighted by respondents included disciplinary, safety, trade and accounting committees)



*Chart 49*  
Length of time in organisation



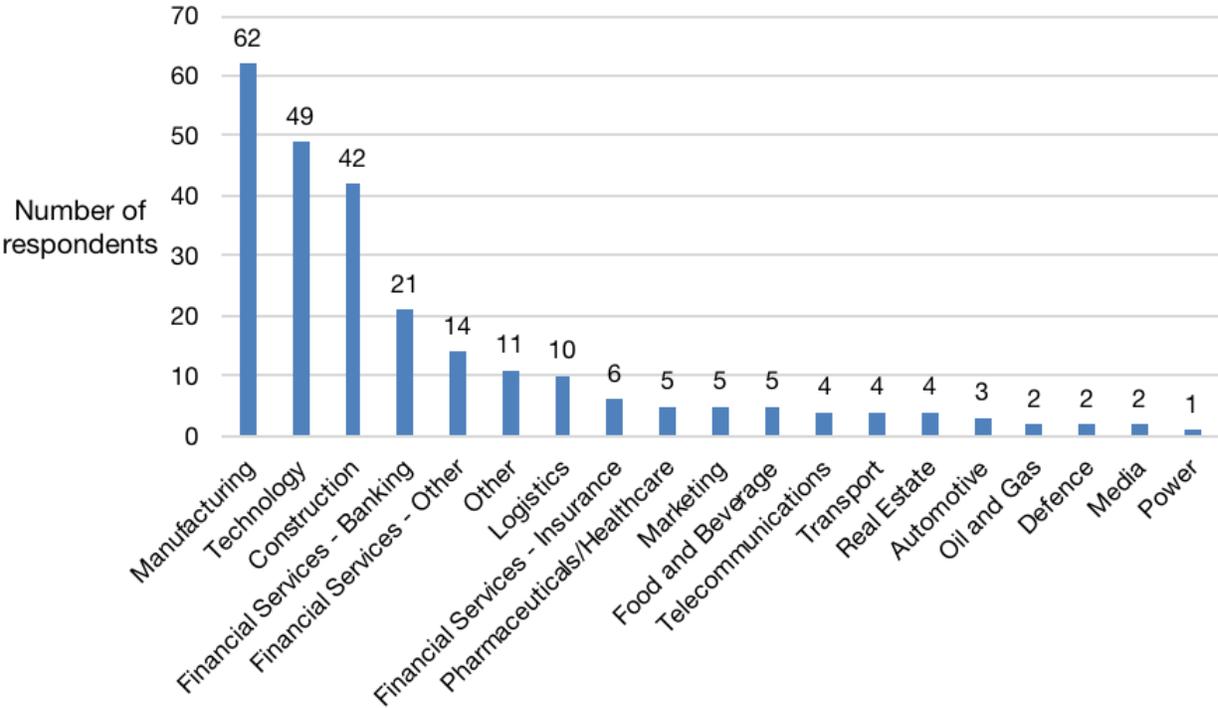
*Chart 50*  
Level



**The Businesses**

The nature of the businesses in which the respondents worked varied considerably, with companies based and operating in various jurisdictions, in a range of industry sectors, and of different size, structure and position in the market.

*Chart 51  
Industry sector*



*Chart 52  
Location of respondents*

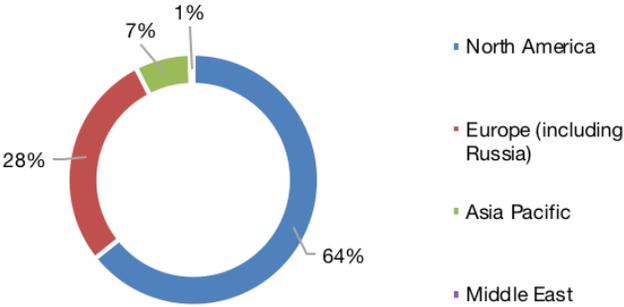


Chart 53  
Location of company headquarters

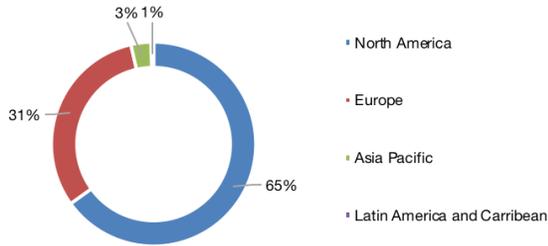


Chart 54  
Business presence  
(Shows the percentage of respondents whose company operates in these regions.)

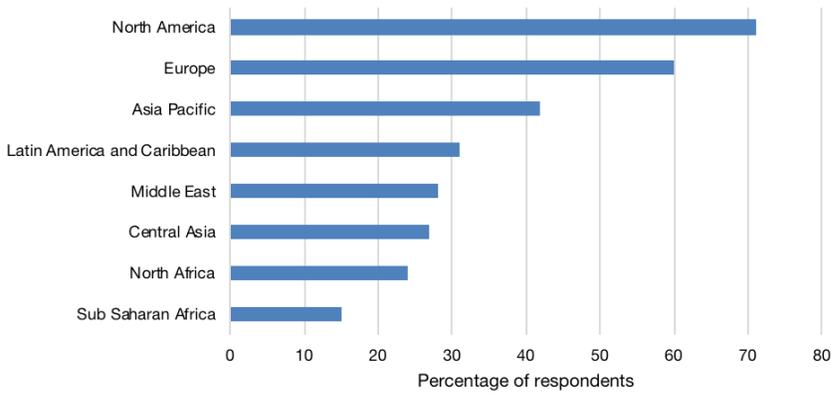
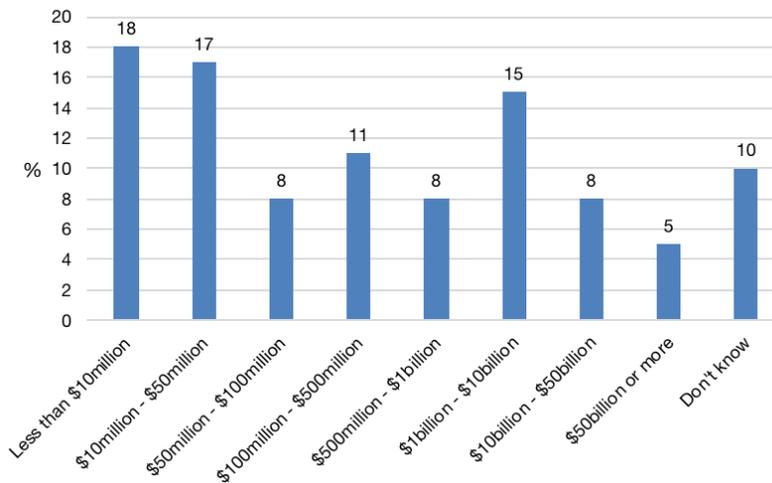
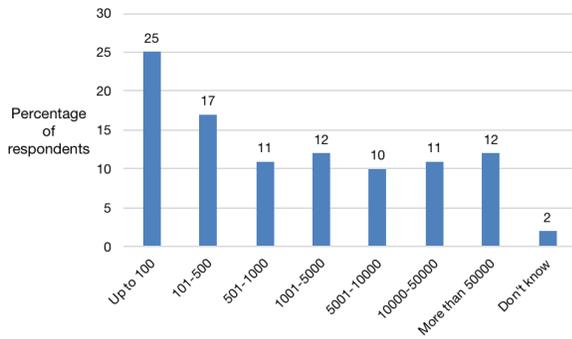


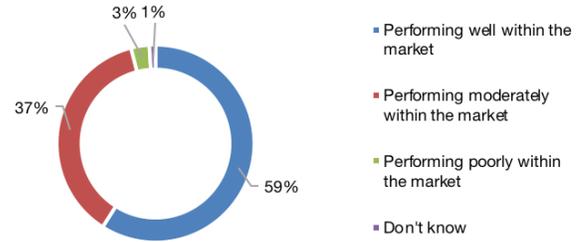
Chart 55  
Annual turnover



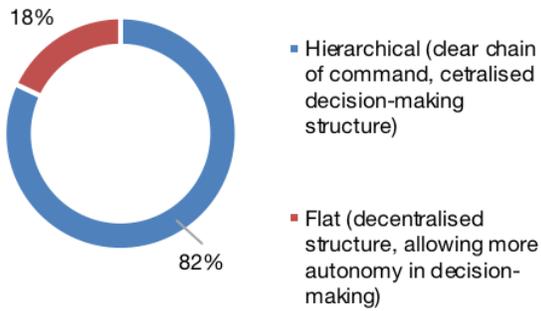
**Chart 56**  
Number of employees



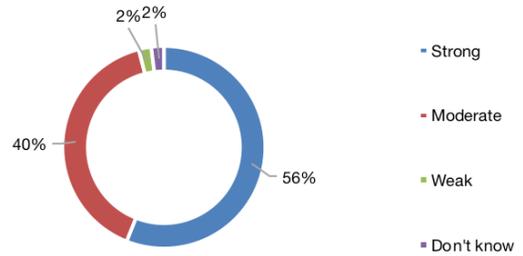
**Chart 59**  
Performance within market



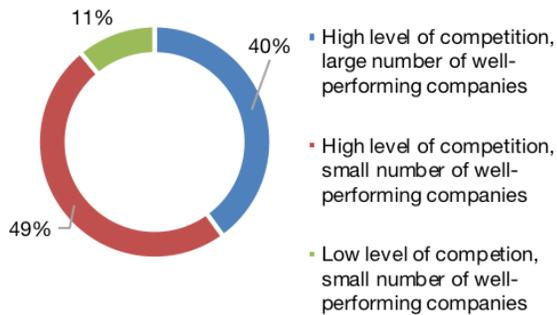
**Chart 57**  
Organisational structure



**Chart 60**  
Current financial position



**Chart 58**  
Current market environment



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## ENDNOTES

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1. Campbell, J-L. and Göritz, A. S. (2014) 'Culture Corrupts! A Qualitative Study of Organizational Culture in Corrupt Organizations', *Journal of Business Ethics*, 120(3): 291-311.
2. Punch, M. (2011) 'The organizational component in corporate crime', in Gobert, J. J. and Pascal, A-M. (eds) *European developments in corporate criminal liability*. London: Routledge, pp. 101-113.
3. Punch, M. (1996) *Dirty Business. Exploring Corporate Misconduct: Analysis and Cases*, London: Sage.
4. Vaughan, D. (2007) 'Beyond Macro- and Micro-Levels of Analysis, Organizations, and the Cultural Fix', in Pontell, H. and Geis, G. (eds) *International Handbook of White-Collar and Corporate Crime*. New York: Springer, pp. 3-24.
5. Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §78m(b)(2)(A), FCPA Resource Guide, p.39 (2012).
6. p. 10 FCPA Resource Guide
7. Cassin, R (2017) The 2016 FCPA Enforcement Index, *The FCPA Blog*, At <http://www.fcpablog.com/blog/2017/1/3/the-2016-fcpa-enforcement-index.html>
8. Cassin, R (2018) 2017 FCPA Enforcement Index, *The FCPA Blog*, At <http://www.fcpablog.com/blog/2018/1/2/2017-fcpa-enforcement-index.html>
9. The House Report 95-640, 95th Congress, 1st Session, US House of Representatives. Available: <http://10.173.2.10/criminal/fraud/fcpa/history/1977/houseprt.html>
10. Cohen, E., L., Felson, M. 1979. Social Change and Crime Rate Trends: A Routine Activity Approach, *American Sociological Review*, 44(4): 588-608.
11. Law Commission (2008) *Reforming Bribery*. London. 97
12. Administrative Offences Act, Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 4 Abs. 58 des Gesetzes vom 7.8.2013 (BGBl. I S. 3154)
13. See Benson, M., Madensen, T. and Eck, J. (2009) 'White-Collar Crime from an Opportunity Perspective', in S. Simpson and D. Weisburd (eds) *The Criminology of White-Collar Crime*, Springer.
14. Reisman, M. (1979) *Folded Lies: Bribery Crusades and Reforms*. New York: Free Press.
15. Mean, minimum and maximum scores were calculated on the middle 50% of the results to eliminate outliers.
16. Though note that the numbers are low for the pharmaceuticals and real estate sectors: 5 and 4 respondents respectively.
17. OECD (2014) *OECD Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD. <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>
18. Mean, minimum and maximum scores were calculated on the middle 50% of the results to eliminate outliers.
19. Mean, minimum and maximum scores were calculated on the middle 50% of the results to eliminate outliers.
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**GLOBAL WHITE-COLLAR  
CRIME SURVEY 2018**

Anti-Bribery and Corruption

Nicholas Lord  
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Katie Benson

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*White & Case*