

2018 GLOBAL ANTI-CORRUPTION SURVEY

Business impediments and elements
of effective compliance programs



The risks associated with corruption remain high, impacting companies' ability to grow in affected markets and their appetite to engage in transactions such as mergers and acquisitions.

AT A GLANCE

- 1** 85% of survey respondents say their industries are [exposed to corruption risk](#), with 30% describing that risk as 'significant.'
- 2** 44% have [pulled out or delayed an acquisition](#) due to corruption risks, up 7% over the prior year.
- 3** An increasing number of companies responded that they have [avoided doing business in a region](#) based on possible corruption risks, with 39% reporting this—an increase of 5% over the prior year.
- 4** 66% believe there are [locations where it is impossible to avoid corrupt business practices](#).
- 5** [Repeat offenders](#) were featured in 3 of the 13 US enforcement actions in 2017, 2 of them involving breaches of previous Deferred Prosecution Agreements.
- 6** 3 US Department of Justice (DOJ) enforcement actions in 2017 and 2018 were publicly settled via Declination Letters as part of the DOJ's Foreign Corrupt Practices Act (FCPA) Corporate Enforcement Policy, evidencing the benefits to companies for [voluntarily disclosing violations](#) and subsequent cooperation.
- 7** To date in 2018, the [majority of enforcement actions involved companies in the financial services industry](#), reflecting a change from 2017, when most of the activity was in the healthcare/medical device and energy industries (three enforcement actions each). Multiple open/disclosed FCPA investigations remain (37 for energy, 11 for healthcare/medical device), but no enforcement actions have been brought in these industries.

WHAT EFFECTIVE COMPLIANCE LOOKS LIKE

As regulation increases, so do compliance efforts. In early 2017 the DOJ issued its Evaluation of Corporate Compliance Programs (Evaluation Guidance), which provides guidance on how it will evaluate effective corporate compliance programs. The guidance covers 11 specific topics, and companies' alignment to them is evident in our survey data, including:

- **Anti-corruption policies, procedures, and internal audits:** These are viewed as the most successful measures to reduce corruption risk, with 81% of respondents saying they have reduced risk this way.
- **Autonomy and resources:** 72% of respondents say they believe they have a dedicated anti-corruption program.
- **Risk assessment:** Of the 85% of respondents who said their industries are exposed to corruption risk, 30% described the risk as significant.
- **Third-party management:** Due diligence on third parties is the biggest challenge to compliance programs, according to 77% of respondents.
- **Confidential reporting and investigation programs:** 66% of respondents said they have whistle-blower hotlines, and 29% said they've received tips related to corruption suspicions in the past 12 months.
- **Continuous improvement, periodic testing, and review:** 69% of respondents say their companies use real-time monitoring for suspicious activity and behavior.

DATA COLLECTION CHALLENGES IMPEDE COMPLIANCE

The sheer volume of information companies must collect and analyze is the biggest obstacle to tackling corruption, according to 75% of survey respondents, followed by variation in company policies by country (74%) and insufficient IT systems (72%). These concerns surrounding management of data are expected to increase with increasing data privacy regulation such as the European Union's General Data Protection Regulation.

88%

expect challenges associated with moving data across country borders will increase or stay the same in next 12 months.

58%

say there are impediments to collecting and analyzing data due to local data protection laws.

87%

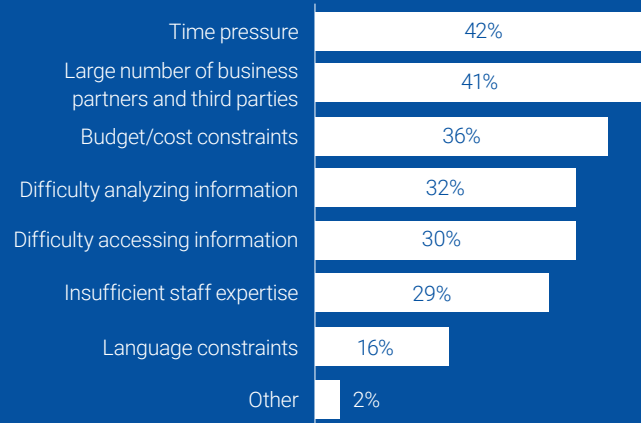
believe their companies are successful in using data to identify possible corruption.

FCPA FOCUS POINT: THIRD-PARTY MANAGEMENT

Despite the importance of performing due diligence on third parties, our survey and analysis indicate these risks may not be effectively mitigated.

- 20 of the 22 FCPA enforcement actions undertaken by the US in 2017 and 2018 involved the improper use of a third party or other agent.¹
- Just 39% of respondents say they 'continually' or 'always' conduct due diligence on third-party agents and consultants. Yet 92% of respondents say they are confident in their due diligence processes, perhaps indicating overconfidence, given the percentage of enforcement actions related to ineffective third-party due diligence.

FACTORS CONTRIBUTING TO LIMITATIONS IN DUE DILIGENCE PROCEDURES



¹ Enforcement actions issued by both SEC and DOJ are counted as a single action

DIFFICULT REGIONS

Latin America and China have been largely recognized as familiar faces for FCPA enforcement actions. While 2016 and 2017 enforcement focused on China and Latin America respectively, 2018 enforcement has targeted multiple jurisdictions, including new areas of heightened concern. But regardless of US enforcement activity, the perceived corruption risks for Latin America and China remain high, as evidenced by survey responses.



**90%¹
and 94%²**

of companies with operations in Latin America and China reported their industries are exposed to corruption risk, as compared with **86% of companies overall**.



81%³

of companies that do business in Latin America and of companies that do business in China said due diligence on third parties is the biggest challenge for compliance programs as compared to **77% of all companies**.



**38%¹
and 41%²**

of companies with operations in Latin America and China say they believe their company has lost business in the last year due to a situation involving illicit payments to a government official, as compared to **27% of companies overall**.



**84%¹
and 80%²**

of companies that do business in Latin America and China said they believe they have a dedicated anti-corruption program, as compared to **72% of all companies**.



**56%¹
and 50%²**

of companies with operations in Latin America and China say their companies have ceased doing business with certain partners due to corruption risk, as compared to **36% of companies overall**.

HEIGHTENED CONCERNS: AFRICA, MIDDLE EAST, RUSSIA

Russia and Africa have begun to emerge as regions of elevated concern. Also, apprehensions about the Middle East increased in this year's survey.

- More than 60% of respondents say Africa poses a 'significant' corruption risk.
- The respondents who say the Middle East has a 'significant' corruption risk increased 11% over the 2017 survey, from 45% to 56% in 2018.
- Of the 66% of respondents who said there are regions where it is impossible to avoid corrupt business practices, 31% said Russia is one such place and 27% cited Africa.
- 71% and 70% of companies with operations in Russia and Africa reported that corruption laws are seen as largely ineffective.

¹ Latin America ² China ³ Both

GOVERNMENTS LOOK TO ANTI-CORRUPTION LAWS

Many countries have shifted their attitudes and enacted new legislation aimed at global enforcement, with varying results. Even with anti-corruption laws in place, other factors can add complexity to enforcement. Governments may struggle with a backlog of cases, discord over how the regulations are applied, or general weak rule of law.

ENFORCEMENT TRENDS

INDIVIDUAL ACTIONS

In 2017 and continuing in 2018, US enforcement continues to focus on prosecuting individuals. [“It’s a powerful enforcement mechanism.”](#) The SEC’s Co-Director in the Division of Enforcement said publicly in May 2018, [“I view individual accountability as perhaps the most effective general deterrent tool in our arsenal, because it can have a broad effect on corporate culture in a way that immeasurably benefits individual investors, preventing misconduct before it starts.”](#) However, despite these explicit statements, the SEC has not brought a single enforcement action against an individual in 2018, potentially indicating a trend toward having these cases handled by the DOJ.

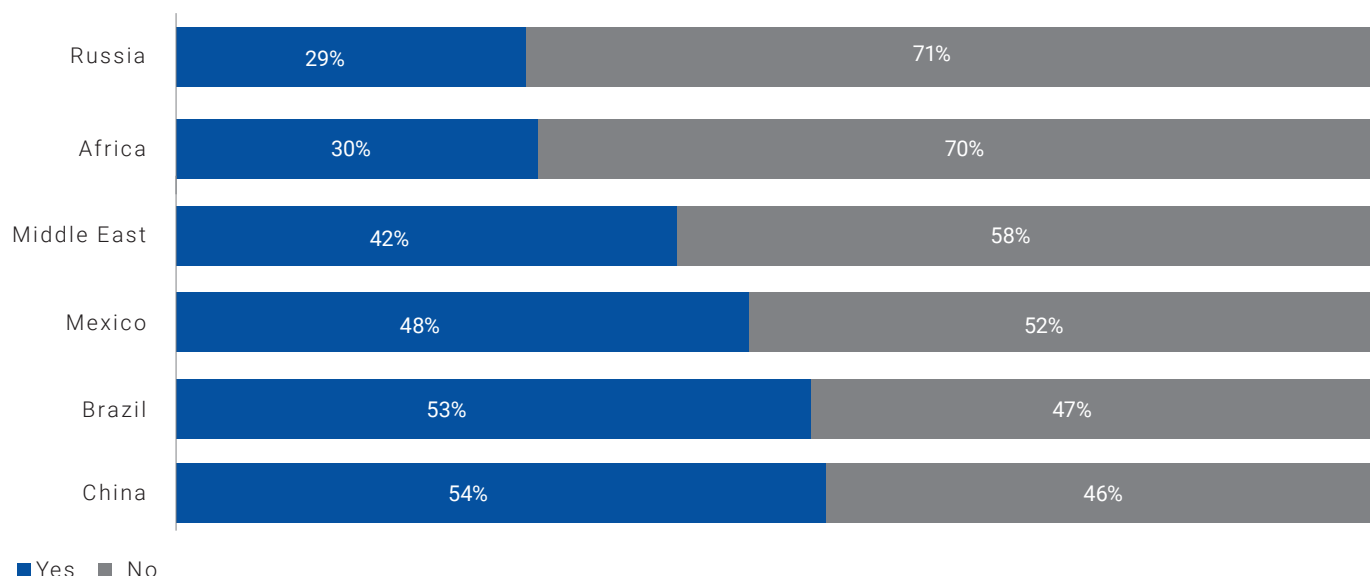
- The SEC and DOJ cumulatively brought charges against 21 individuals in 2017.
- Through 2018, the DOJ has brought charges against at least 15 individuals.
- Globally, politicians are being increasingly targeted for prosecution in corruption and graft initiatives as many countries tolerance for political corruption has shifted.

INTERNATIONAL COOPERATION

Cross-border regulatory action is increasing, as governments share information and work together to levy harsher penalties.

- Of the 13 corporate FCPA enforcement actions brought by US agencies in 2017, 4 involved international cooperation or a global enforcement action involving cross-jurisdictional enforcement agencies including the cases of Keppel Offshore & Marine, SBM Offshore N.V., and Telia AB. [Looking specifically at the Telia action, the DOJ acknowledged the assistance of more than a dozen jurisdictions that did not take part in any settlements.](#)
- Of the 9 corporate FCPA enforcement actions brought by US agencies so far in 2018, 2 involved international cooperation or a global enforcement action involving cross-jurisdictional enforcement agencies.
- While no individual European country or enforcement agency is conducting more investigations than the US agencies, as a whole Europe is now conducting more investigations into foreign bribery than US agencies are. [Notably, the Société Générale resolution marked the first coordinated resolution between the DOJ and French authorities related to a foreign bribery case.](#)
- Latin America (Brazil): The Brazilian enforcement agencies have demonstrated their willingness to globally enforce anti-corruption initiatives, with 5 of the 9 global enforcement actions since 2016 involving Brazilian enforcement agencies.

DO YOU BELIEVE THAT CORRUPTION LAWS ARE EFFECTIVE IN THE COUNTRIES IN WHICH YOU OPERATE?



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