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Introduction

Managing bribery and corruption risk continues to take center stage in corporate boardrooms. Many business leaders recognize the potential for significant reputational harm from public scandal; economic cost in the form of investigations, fines, and penalties; and individual cost in the form of criminal prosecution. For many multinational companies, the enactment of the United Kingdom (UK) Bribery Act 2010, which criminalizes private sector bribery and the failure by a commercial organization to prevent bribery, only raises the ante. For others, continued high levels of enforcement activity by the United States (U.S.) Department of Justice (DOJ) and Securities and Exchange Commission (SEC), including imposition in 2010 of eight of the ten largest combined criminal and civil fines and penalties against corporations in the history of the Foreign Corrupt Practices Act (FCPA), has lead to a renewed emphasis on anti-bribery and corruption (AB&C) compliance activities.

Bribery and corruption exist in all parts of the world in varying degrees. Seven of ten executives we recently surveyed believe there are places in the world where business cannot be done without engaging in bribery and corrupt conduct. Of the remaining executives who do not believe bribery and corruption are endemic in some parts of the world, approximately 28 percent have nevertheless chosen not to do business in a country due to bribery and corruption issues.

Many multinational companies follow an approach which mitigates AB&C risk rather than eliminate it by opting not to do business at all. We surveyed 214 executives in the U.S. and UK to identify their most vexing AB&C compliance challenges and to understand how companies are preventing, detecting, and responding to AB&C risk.

The results of our survey indicate that, despite a greater awareness of the business and legal imperatives for well-developed AB&C compliance programs among survey respondents, many compliance programs lack sufficient depth and breadth to effectively mitigate AB&C risk around the world.

1 As of January 2011, The FCPA Blog (www.fcpablog.com) listed the following top 10 FCPA settlements: Siemens (Germany) – $800 million in 2008; KBR/Halliburton (USA) – $579 million in 2009; BAE (UK) – $400 million in 2010; Snamprogetti/ENI (Holland/Italy) – $265 million in 2010; Technip (France) – $338 million in 2010; Daimler (Germany) – $185 million in 2010; Alcatel-Lucent (France) – $137 million in 2010; Parapina (Switzerland) – $81 million in 2010; ABB Ltd. (Switzerland) – $58 million in 2010; and Pride Int’l (USA) – $56 million in 2010. At the time of publication in May 2011, ABB and Pride dropped off The FCPA Blog’s top 10 list and were replaced with JGC Corp. (Japan) – $218 million in 2011; and Johnson & Johnson (USA) – $70 million in 2011.
Key Findings

Top 3 Compliance Challenges
The three most significant AB&C compliance challenges cited by both U.S. and UK respondents are auditing third parties for compliance, difficulty in performing effective due diligence on foreign agents/third parties, and variations in country requirements and local laws on issues such as data privacy and facilitating payments.

Compliance Programs
Despite the authoritative guidance offered by a myriad of sources, including the U.S. Federal Sentencing Guidelines for Organizations (Organizational Sentencing Guidelines)2, Senior Staff of the UK Serious Fraud Office (SFO)3, the UK Ministry of Justice (UK MOJ) guidance related to the UK Bribery Act 2010 (Guidance)4, the DOJ5, and the Organisation for Economic Co-operation and Development (OECD):

• One in five U.S. and UK respondents does not have communication and training programs.
• More than one in three in the U.S. and one in four UK respondents stated that training for employees is required less frequently than once a year.
• One in two U.S. and UK respondents does not have a committee responsible for overseeing compliance with AB&C regulations.
• Three in four U.S. and three in five UK respondents do not have a full-time dedicated AB&C compliance officer.
• One in three U.S. and UK respondents does not perform AB&C risk assessments.

• Of those who conduct AB&C risk assessments, almost one in three U.S. respondents (nearly one in four in the UK) conduct these assessments less frequently than once a year.

Third Parties
Despite the known compliance risks associated with third parties, representatives, and agents:

• Two in five respondents who have written AB&C policies do not distribute these policies to agents, distributors, vendors, brokers, joint venture partners, or suppliers.
• Three in five respondents who have AB&C compliance programs that incorporate AB&C training do not require any third party representatives to participate in AB&C training.
• Three in five respondents with “right to audit clauses” in third party contracts have not exercised this right.
• More than one in two U.S. and two in five UK respondents do not obtain periodic compliance certifications from agents, distributors, vendors, brokers, joint venture partners, or suppliers.

Compliance with Foreign Laws
• Almost 80 percent of U.S. respondents—who self-identify themselves as “one of the most senior persons in charge of day-to-day AB&C matters at their company”—have little to no knowledge of the UK Bribery Act 2010, compared with 32 percent of UK respondents.6

As a result of recent changes in AB&C enforcement, regulations, and compliance, KPMG decided it was important to update its AB&C surveys from 2009 and 2008. In the following pages, the KPMG Anti-Bribery and Corruption Survey 2011 examines organizations’ challenges in complying with AB&C regulations, including the UK Bribery Act 2010 and FCPA, and how they are responding to those challenges through their AB&C compliance programs, policies and protocols.

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Anti-Bribery and Corruption Challenges

This portion of the survey illuminates the common challenges experienced by the respondents globally as they attempt to operate globally, ethically, and profitably.

Compliance Challenges and Risks
Two of the top three AB&C compliance challenges cited by U.S. and UK respondents relate to managing business relationships with third parties, a result which, for U.S. respondents, remains unchanged from our 2008 survey.

Comfort over managing the AB&C compliance risks presented by third parties, agents, and intermediaries in foreign markets through the enforcement of right-to-audit clauses and effective due diligence procedures remains elusive. Due diligence, one of the six “principles” around which the UK MOJ designed its recently issued Guidance on “adequate procedures,”8 can be hampered by the shortage, and even absence, of reliable information on potential business partners.9

Most challenging AB&C issues include third-party compliance auditing/performing effective due diligence, and variations in country requirements

Auditing third parties for compliance

<table>
<thead>
<tr>
<th>Very Challenging</th>
<th>32%</th>
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<tbody>
<tr>
<td>Somewhat Challenging</td>
<td>39%</td>
</tr>
<tr>
<td>Not at all Challenging</td>
<td>29%</td>
</tr>
</tbody>
</table>

7 http://www.youtube.com/watch?v=1Rd1EE3s7xY&feature=player_embedded
8 The Bribery Act 2010 – Guidance, UK MOJ
9 Fifty-four percent of U.S. respondents cited an increased challenge as a result of lack of authoritative regulatory guidance, up from 27 percent in 2008. One would expect an increase in comfort as regulations and enforcement priorities are reinforced over time. Possible explanations for this finding include (1) delayed publication of the Guidance until late March 2011 (after our field work was completed); (2) previously uninvolved governments, such as Nigeria, Latvia, or India, becoming active in the AB&C enforcement arena and closely following U.S. and other enforcement proceedings in hopes of extracting additional settlements from multinationals admitting to acts of bribery and corruption within their borders; and (3) the drafting, adopting, or updating of AB&C laws by other countries, such as the People’s Republic of China and Brazil, which include extraterritorial reach provisions and definitions of offenses analogous to definitions in the FCPA.
Most challenging AB&C issues include third-party compliance auditing/performing effective due diligence, and variations in country requirements (continued)

Difficulty in performing effective due diligence on foreign agents/third parties

<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>U.S.</th>
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</thead>
<tbody>
<tr>
<td>Very challenging</td>
<td>32%</td>
<td>42%</td>
</tr>
<tr>
<td>Somewhat challenging</td>
<td>41%</td>
<td>33%</td>
</tr>
<tr>
<td>Not at all challenging</td>
<td>27%</td>
<td>25%</td>
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Variations in country requirements/local laws (e.g., data privacy, facilitating payments)

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<thead>
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<th>UK</th>
<th>U.S.</th>
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</thead>
<tbody>
<tr>
<td>Very challenging</td>
<td>29%</td>
<td>32%</td>
</tr>
<tr>
<td>Somewhat challenging</td>
<td>34%</td>
<td>37%</td>
</tr>
<tr>
<td>Not at all challenging</td>
<td>38%</td>
<td>30%</td>
</tr>
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Company’s expansion into high-growth economies

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<thead>
<tr>
<th></th>
<th>UK</th>
<th>U.S.</th>
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<tbody>
<tr>
<td>Very challenging</td>
<td>21%</td>
<td>18%</td>
</tr>
<tr>
<td>Somewhat challenging</td>
<td>38%</td>
<td>45%</td>
</tr>
<tr>
<td>Not at all challenging</td>
<td>41%</td>
<td>37%</td>
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Monitoring and evaluating compliance

<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>U.S.</th>
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<tbody>
<tr>
<td>Very challenging</td>
<td>14%</td>
<td>11%</td>
</tr>
<tr>
<td>Somewhat challenging</td>
<td>49%</td>
<td>55%</td>
</tr>
<tr>
<td>Not at all challenging</td>
<td>37%</td>
<td>34%</td>
</tr>
</tbody>
</table>

Note: May not equal 100% due to rounding.
Least challenging AB&C issues include lack of emphasis on compliance, maintaining documentation, and lack of clarity regarding internal AB&C roles/responsibilities

Lack of emphasis on compliance (i.e., improper tone from the top, lack of accountability)

- Not at all challenging: 70% (UK), 74% (U.S.)
- Somewhat challenging: 22% (UK), 21% (U.S.)
- Very challenging: 5% (UK), 5% (U.S.)

Maintaining documentation supporting accurate books and records

- Not at all challenging: 59% (UK), 66% (U.S.)
- Somewhat challenging: 30% (UK), 27% (U.S.)
- Very challenging: 11% (UK), 7% (U.S.)

Lack of clarity regarding internal anti-bribery and corruption roles and responsibilities

- Not at all challenging: 58% (UK), 64% (U.S.)
- Somewhat challenging: 37% (UK), 31% (U.S.)
- Very challenging: 5% (UK), 5% (U.S.)

Continuing to run business while managing investigations

- Not at all challenging: 56% (UK), 59% (U.S.)
- Somewhat challenging: 35% (UK), 31% (U.S.)
- Very challenging: 9% (UK), 11% (U.S.)

Note: May not equal 100% due to rounding.
Given that electronic payment methods are new or non-existent in many emerging and developing economies, it is not surprising that executives identified susceptibility to prohibited cash payments as a leading AB&C concern. In largely cash-based societies, it is difficult to control and monitor daily cash expenditures of local operations. Many companies struggle to balance the need for proper control and monitoring with every day business operations, such as issuing customer refunds and paying for courier services.

Vulnerability to specific types of violations is fairly consistent across U.S. and UK respondents, with two notable differences. Excessive gift giving was considered a greater vulnerability by U.S. respondents than their UK counterparts, but improper charitable contributions were considered a greater vulnerability by UK respondents than U.S. respondents. These differences in the perception of risk between the U.S. and UK may be cultural. Under U.S. companies’ gift-giving policies, it may simply be easier to provide gifts, whereas UK companies’ policies may “favor” charitable contributions.

### Least challenging AB&C issues include lack of emphasis on compliance, maintaining documentation, and lack of clarity regarding internal AB&C roles/responsibilities (continued)

#### Difficulty in obtaining compliance certifications

<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all challenging</td>
<td>59%</td>
<td>52%</td>
</tr>
<tr>
<td>Somewhat challenging</td>
<td>33%</td>
<td>32%</td>
</tr>
<tr>
<td>Very challenging</td>
<td>8%</td>
<td>16%</td>
</tr>
</tbody>
</table>

Multiple responses allowed

### Violations to which respondents are most susceptible

<table>
<thead>
<tr>
<th>Violations</th>
<th>2010 UK</th>
<th>2010 U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibited cash payments</td>
<td>61%</td>
<td>59%</td>
</tr>
<tr>
<td>Excessive travel or entertainment expenses</td>
<td>51%</td>
<td>54%</td>
</tr>
<tr>
<td>Lack of supporting documentation for payments</td>
<td>50%</td>
<td>56%</td>
</tr>
<tr>
<td>Excessive gift giving</td>
<td>46%</td>
<td>59%</td>
</tr>
<tr>
<td>Improper recording of facilitation payments</td>
<td>49%</td>
<td>54%</td>
</tr>
<tr>
<td>Improper payment of travel expenses</td>
<td>50%</td>
<td>47%</td>
</tr>
<tr>
<td>Improper recording of travel and entertainment expenses</td>
<td>43%</td>
<td>41%</td>
</tr>
<tr>
<td>Improper recording of gifts or charitable contributions</td>
<td>43%</td>
<td>36%</td>
</tr>
<tr>
<td>Improper charitable contributions</td>
<td>34%</td>
<td>21%</td>
</tr>
<tr>
<td>Other</td>
<td>15%</td>
<td>14%</td>
</tr>
</tbody>
</table>
Knowledge/Awareness

Among UK executives surveyed, 68 percent said that they possessed a working knowledge of the UK Bribery Act 2010. This is a dramatic increase from 23 percent in 2009. It also likely reflects the intense media coverage of the Act, as well as debate about compliance lapses by UK-based and other multinational corporations.

In sharp contrast, nearly 80 percent of U.S. respondents reported that they had little or no knowledge of the UK Bribery Act 2010; 50 percent were unaware of the Act’s applicability to offenses committed by UK citizens and companies abroad. Given the UK Bribery Act 2010’s broad jurisdictional reach, this gap suggests U.S. companies could be at a significant risk of non-compliance.

How much would you say you know about the UK Bribery Act 2010?

<table>
<thead>
<tr>
<th>Knowledge of the UK Bribery Act 2010</th>
<th>2010 UK</th>
<th>2010 U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A great deal</td>
<td>21%</td>
<td>4%</td>
</tr>
<tr>
<td>A fair amount</td>
<td>47%</td>
<td>17%</td>
</tr>
<tr>
<td>Just a little</td>
<td>29%</td>
<td>26%</td>
</tr>
<tr>
<td>Heard of but know nothing about</td>
<td>3%</td>
<td>22%</td>
</tr>
<tr>
<td>Never heard of the UK Bribery Act 2010</td>
<td>0%</td>
<td>31%</td>
</tr>
</tbody>
</table>

Many were aware that bribery/corruption committed by UK citizens/companies abroad is a criminal offense under the UK Bribery Act 2010
Attitudes

Although 39 percent of executives surveyed believe that AB&C regulations put companies at a competitive disadvantage, 56 percent do not believe that AB&C enforcement is excessive and 61 percent believe that AB&C regulations will change the way most companies and people do business. UK executives appear to be more optimistic regarding the positive impact and benefits related to AB&C regulations in comparison to their U.S. counterparts.

<table>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The anti-bribery and corruption regulations are a laudable attempt to put an end to unfair practices</td>
<td>72%</td>
<td>65%</td>
<td>14%</td>
<td>19%</td>
<td>14%</td>
<td>16%</td>
</tr>
<tr>
<td>The anti-bribery and corruption regulations ignore the fact that, in many countries, bribery is simply the way business is done</td>
<td>54%</td>
<td>50%</td>
<td>22%</td>
<td>24%</td>
<td>24%</td>
<td>26%</td>
</tr>
<tr>
<td>Anti-bribery and corruption regulations put companies at a competitive disadvantage</td>
<td>39%</td>
<td>39%</td>
<td>24%</td>
<td>16%</td>
<td>37%</td>
<td>45%</td>
</tr>
<tr>
<td>This is an example of the governments imposing costly and excessive requirements</td>
<td>34%</td>
<td>32%</td>
<td>21%</td>
<td>25%</td>
<td>44%</td>
<td>43%</td>
</tr>
<tr>
<td>Regulatory and law enforcement authorities should not expect companies to self-report all violations or potential violations of anti-bribery and corruption regulations</td>
<td>28%</td>
<td>35%</td>
<td>21%</td>
<td>25%</td>
<td>50%</td>
<td>40%</td>
</tr>
<tr>
<td>Difficulties in collecting evidence mean the anti-bribery and corruption regulations are unlikely to be effective</td>
<td>19%</td>
<td>26%</td>
<td>32%</td>
<td>32%</td>
<td>49%</td>
<td>42%</td>
</tr>
<tr>
<td>Anti-bribery and corruption regulations will not change the way that most companies and people do business</td>
<td>20%</td>
<td>25%</td>
<td>14%</td>
<td>20%</td>
<td>66%</td>
<td>56%</td>
</tr>
<tr>
<td>There is excessive enforcement of anti-bribery and corruption regulations</td>
<td>19%</td>
<td>16%</td>
<td>21%</td>
<td>32%</td>
<td>60%</td>
<td>52%</td>
</tr>
</tbody>
</table>

Rating Scale: Five-point scale where 1 indicates strongly disagree and 5 indicates strongly agree.

Note: May not equal 100% due to rounding.
Responding to the Challenges

Much guidance has been issued recently by a variety of governmental and non-governmental organizations regarding compliance programs to mitigate the risks of bribery and corruption.10 This guidance includes many consistent themes related to tone from the top, risk assessment, due diligence, training and communication, channels for raising concerns, monitoring and review, and investigation and remediation. We observed, however, interesting differences in the content and application of certain procedures and methods within respondents’ AB&C compliance programs.

AB&C Policies and Procedures

Since the publication of our 2008 U.S. and 2009 UK surveys, we have witnessed a marked increase in the thought and attention devoted to the issue of AB&C compliance by companies around the world, especially in the UK. Our survey found that UK companies now outpace U.S. companies in the implementation of formal, written AB&C compliance programs.

Specifically, our survey found that implementation of formal, written AB&C policies and procedures by U.S. respondents remained relatively consistent with the findings of our 2008 survey—85 percent in 2008, 78 percent in 2010. UK executives, however, experienced a sharp increase in this regard: 86 percent now report having formal, written AB&C policies and procedures, versus only 57 percent in 2009. This is likely a result of the passage of the UK Bribery Act 2010, as well as the increased number of enforcement actions taken by the SFO and recent media and public attention focused on the subject.

Most have a formal, written anti-bribery and corruption compliance program in their company, up sharply in UK since 2009

In addition to the guidance listed in Notes 1–4, supra, the OECD adopted similar provisions in its February 2010 “Good Practice Guidance on Internal Controls, Ethics, and Compliance” (Good Practice Guidance).
Compliance with Other Laws and Acts

Of those respondents who reported having formal, written AB&C compliance programs, UK and U.S. respondents varied broadly in terms of which laws their programs covered. Specifically, 92 percent of UK respondents reported their programs addressed compliance with the UK Bribery Act 2010, but only 46 percent with the FCPA. U.S. respondents reported almost the reverse: 94 percent addressed FCPA compliance and only 43 percent addressed compliance with the UK Bribery Act 2010.

The fact that almost half of respondents in each country fail to address requirements of the AB&C law of the other is significant. There are important similarities between the two laws, but there are also unique requirements in each law that companies need to address. Furthermore, given the history of FCPA enforcement proceedings in the U.S. and the broad jurisdiction language found in the UK Bribery Act 2010, it may be prudent to assume the applicability of both laws to most multinational corporations.

How AB&C programs address compliance with various laws and guidelines
(Among those who have a formal, written AB&C compliance program)

Local laws

![Bar chart showing compliance with local laws.]

UK Bribery Act 2010

![Bar chart showing compliance with the UK Bribery Act 2010.]

FCPA

![Bar chart showing compliance with the FCPA.]

OECD Guidelines

![Bar chart showing compliance with the OECD Guidelines.]

Note: May not equal 100% due to rounding.
**AB&C Program Elements**

Our survey suggests that U.S. AB&C programs are broader and encompass more elements compared to two years ago. This may be due to increased sensitivity following enforcement actions by U.S. authorities over this period.

With respect to AB&C roles and responsibilities, there appears to be a trend among U.S. respondents away from full-time, dedicated AB&C compliance officers and towards entrusting committees with overseeing AB&C compliance. In contrast, UK respondents appear to have embraced the appointment of a full-time, dedicated AB&C compliance officer.

Although there has been improvement on the part of U.S. respondents, the rate of adoption by U.S. and UK respondents of AB&C risk assessments suggests that about one in three companies have not designed and implemented a risk-based AB&C compliance program. Risk assessments and proportionality are two of the six principles around which the UK MOJ designed its “adequate procedures” Guidance pertaining to the UK Bribery Act 2010. Proportionality is the concept that a company’s procedures should be commensurate with the risks the organization faces and the size of its business, and assumes the organization has in fact conducted a risk assessment. Similarly, the OECD Good Practice Guidance, Organizational Sentencing Guidelines, and various corporate deferred and non-prosecution agreements recommend, and in some cases, require AB&C risk assessments.

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**U.S. and UK AB&C Program Elements**

- **Anti-Bribery and Corruption policies and procedures (written or unwritten)** 83% 88% 84%
- **Whistleblower Mechanisms (i.e., Compliance or Ombudsman hotline)** 77% 87% 75%
- **Communication and training programs** 77% 82% 67%
- **Continuous monitoring and internal audit protocols** 80% 90% 73%
- **Conduct of anti-bribery and corruption compliance risk assessments** 69% 66% 49%
- **“Right to audit” clauses are incorporated into third-party contracts** 57% 65%
- **Periodic compliance certifications** 54% 61% 39%
- **A committee responsible for overseeing compliance with anti-bribery and corruption regulations** 47% 47% 37%
- **A full-time dedicated anti-bribery and corruption compliance officer** 41% 26% 32%
- **None of the above** 1% 4%

Multiple responses allowed.

* Not asked in 2008 U.S.
Most have reviewed and updated their AB&C compliance program within the last year; only two-thirds in the U.S.

Program Updates
Periodic AB&C compliance program reviews and updates, which can help ensure validity and relevance of program components, are considered by many to be leading practice. In this category, U.S. respondents trailed their UK counterparts. Given that the UK Bribery Act 2010 received royal assent on April 8, 2010, it is not surprising that 80 percent of UK respondents reviewed and updated their AB&C compliance programs more recently than their U.S. counterparts. Interestingly, one in three U.S. respondents appear to review and update their AB&C compliance plans less than annually, consistent with the results of our 2008 survey but not consistent with DOJ’s recommended approach in relevant corporate deferred and non-prosecution agreements.

Policy Distribution
There has been a dramatic increase in the percentage of U.S. respondents who report their AB&C policies and procedures are distributed to employees, up from 68 percent in 2008 to 100 percent in 2010. Although trailing their UK counterparts, the percentage of U.S. respondents reporting distribution to third parties has increased considerably—from 43 percent in 2008 to 58 percent in 2010. This increase reflects the widely held view among respondents that third party risk presents significant AB&C compliance challenges.
Frequency of Compliance Risk Assessments

The number of U.S. respondents in 2010 reporting that AB&C compliance risk assessments are conducted at least once a year (72 percent) is in line with 2008 results (76 percent). Within this population, however, there has been a trend away from performing risk assessments only once a year to performing them more frequently. On the other hand, approximately one in five U.S. and UK respondents report compliance risk assessments are performed on an “as necessary” basis.

Risk assessments are a crucial part of a rigorous AB&C compliance program. When done well, they provide management with timely, in-depth, specific, and actionable information regarding the level of AB&C compliance risk across the organization. This information, in turn, allows management to design and tailor its AB&C programs in alignment with the entity’s risk management strategies. Compliance risk assessments can also provide management timely feedback regarding the effectiveness of its existing AB&C compliance programs.

Performing compliance risk assessments on an “as necessary” basis creates a perception that these activities are ad hoc, rather than part of a well-planned and integrated approach to managing AB&C risk.

Almost half say AB&C compliance risk assessments are conducted annually (Among those whose program includes conduct of AB&C compliance risk assessments)

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<tbody>
<tr>
<td>More than once per year</td>
<td>30%</td>
<td>23%</td>
<td>10%</td>
</tr>
<tr>
<td>Annually</td>
<td>46%</td>
<td>49%</td>
<td>66%</td>
</tr>
<tr>
<td>Once every few years</td>
<td>1%</td>
<td>6%</td>
<td>4%</td>
</tr>
<tr>
<td>As necessary</td>
<td>22%</td>
<td>23%</td>
<td>20%</td>
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</table>

Note: May not equal 100% due to rounding.

Scope of Risk Assessments

Approximately eight in ten U.S. and UK respondents conduct AB&C compliance risk assessments at an enterprise-wide level. Four in ten respondents report that such assessments are performed at an enterprise-wide level only. Nearly one in ten respondents report that AB&C compliance risk assessments are performed on a geographical basis.

AB&C statutes and business practices can vary significantly between locales. Entities that do not perform compliance risk assessments by geography may be exposing themselves to greater compliance risk than those entities that do.

About 8 in 10 say the scope of AB&C compliance risk assessment is enterprise-wide (Among those whose program includes conduct of AB&C compliance risk assessments)

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<tr>
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</thead>
<tbody>
<tr>
<td>Enterprise-wide</td>
<td>41%</td>
<td>46%</td>
<td>43%</td>
</tr>
<tr>
<td>By line of business</td>
<td>12%</td>
<td>11%</td>
<td>12%</td>
</tr>
<tr>
<td>Geography</td>
<td>7%</td>
<td>10%</td>
<td>18%</td>
</tr>
<tr>
<td>All of the above</td>
<td>41%</td>
<td>33%</td>
<td>27%</td>
</tr>
</tbody>
</table>

Note: May not equal 100% due to rounding.
Majority say AB&C training is mandatory for all employees; more prevalent in the UK (Among those whose program includes communication and training programs)

Training
Communication and training is a basic element of an AB&C compliance program and is part of the UK MOJ’s guidance on what constitutes “adequate procedures” in relation to the UK Bribery Act 2010. Our results show that 65 percent of UK respondents require all employees to be trained, compared to 49 percent of U.S. respondents.

In comparing our U.S. findings for 2010 to those for 2008, it is interesting to note U.S. respondents have moved away from making AB&C training mandatory for certain employees based on a risk-based approach in favor of making it mandatory for all employees.

Frequency of Training
Seventy-six percent of UK respondents require their employees to participate in AB&C training at least annually, compared with 63 percent of U.S. respondents. Approximately one in four UK and one in three U.S. respondents reported that AB&C training is required by employees less than annually.

The disparity of practice between UK and U.S. respondents is somewhat surprising given the existence of the Organizational Sentencing Guidelines requirements and DOJ’s views related to ethics and compliance training programs as described in relevant deferred and non-prosecution agreements.

Significant majority say employees are required to participate in AB&C training at least annually; others less often (Among those whose program includes communication and training programs)

*Small base size. Findings directional only.
Training and Third Parties

In recent deferred prosecution agreements, DOJ has included a provision stating that one of the components of “rigorous anti-corruption compliance code, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws” is “periodic training for all directors, officers, and employees, and, where necessary and appropriate, agents and business partners” (emphasis supplied).\(^{11}\) In its Good Practice Guidance, the OECD notes that, while training should be provided to all levels of the company, business partners need only be informed of the company’s compliance program and commitment to abide by relevant laws.\(^{12}\)

It is not surprising then that only four in ten U.S. and UK respondents require AB&C training on the part of their third parties. It is interesting to note that UK respondents are more likely to require all third parties to participate in AB&C training (33 percent versus 13 percent of U.S. respondents).

In a positive trend, the percentage of U.S. respondents that require third party participation in AB&C training improved from 7 percent to 40 percent, highlighting growing efforts to manage bribery and corruption risks associated with third parties.

Compliance Certifications

Of the more than half of UK and U.S. respondents whose AB&C compliance programs include obtaining compliance certifications, almost all (93 percent in the UK and 89 percent in the U.S.) require periodic compliance certifications to be provided specifically by employees. UK respondents were more stringent about requiring certifications from third parties than their U.S. counterparts (61 percent to 43 percent).

Most say third party agents are not required to take AB&C training (Among those whose program includes communication and training programs)

<table>
<thead>
<tr>
<th>2010 UK</th>
<th>2010 U.S.</th>
<th>2008 U.S.*</th>
</tr>
</thead>
<tbody>
<tr>
<td>No, third-party representatives are not required to take training</td>
<td>59%</td>
<td>60%</td>
</tr>
<tr>
<td>Only certain third-party representatives are required to take training</td>
<td>7%</td>
<td>27%</td>
</tr>
<tr>
<td>Yes, all third-party representatives are required to take anti-bribery and corruption training</td>
<td>33%</td>
<td>13%</td>
</tr>
</tbody>
</table>

*Small base size. Findings directional only. Note: May not equal 100% due to rounding.

Nearly all say periodic compliance certifications are obtained from employees (Among those whose program includes periodic compliance certifications)

<table>
<thead>
<tr>
<th>2010 UK</th>
<th>2010 U.S.</th>
<th>2008 U.S.*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees</td>
<td>93%</td>
<td>89%</td>
</tr>
<tr>
<td>Agents, distributors, vendors, brokers, joint venture partners and suppliers*</td>
<td>61%</td>
<td>43%</td>
</tr>
</tbody>
</table>

Multiple responses allowed.

* “Suppliers” has been grouped with “Agents, distributors...” in 2010; Option reclassified for 2008 U.S. survey.

---


1\(^{12}\) Ibid, footnotes 2, 3 and 4.
Right to Audit

As noted previously, more than half of UK and U.S. respondents (57 percent and 65 percent, respectively) have “right to audit” clauses in their contracts with third parties.

Slightly more than one-third of that group actually exercises those clauses (41 percent in the UK, 34 percent in the U.S.). This percentage has remained static notwithstanding commentary by DOJ and others that inclusion of such clauses in standard contracts, and actually exercising the contractual right, are essential elements of an effective AB&C compliance program in relevant deferred and non-prosecution agreements.13

Significant majority say they have not exercised their “Right to Audit” (Among those who say “Right to Audit” clauses are incorporated into third-party contracts)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>59%</td>
<td>66%</td>
<td>68%</td>
</tr>
<tr>
<td>Yes</td>
<td>41%</td>
<td>34%</td>
<td>32%</td>
</tr>
</tbody>
</table>

Whistleblower Mechanism

A significant majority of U.S. and UK respondents with “whistleblower” or “hotline” mechanisms make them available to third parties—63 percent in the UK and 72 percent in the U.S. These findings are consistent with our 2008 U.S. survey results.

Due to country-by-country variations regarding the legality of “hotlines”—let alone the legality of sharing the results of complaints made to “hotlines”—the scope of our survey did not include the extent of information sharing with third parties.

Significant majority say hotline is accessible to third parties in addition to employees (Among those whose program includes whistleblower mechanisms (i.e., Compliance or Ombudsman hotline))

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>63%</td>
<td>72%</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>37%</td>
<td>27%</td>
<td></td>
</tr>
</tbody>
</table>

13 This is consistent with our 2008 U.S. survey; we did not ask this question in the 2009 UK survey.

Types of Continuous Monitoring

Continuous monitoring is another widely recognized and utilized component of an effective AB&C compliance program. As we noted earlier, approximately 75 percent of UK and U.S. respondents included continuous monitoring as part of their compliance program efforts. Internal audit initiatives are the most common monitoring approach reported by respondents (52 percent in the UK, 70 percent in the U.S.). Forensic data analysis is used by just under one-third of respondents. The role of internal audit departments is utilized more in the U.S. as part of an overall AB&C compliance program than in the UK.

Continuous monitoring most often includes audit-led specific AB&C compliance audits (more likely in U.S.) and Line of Business self-assessments (more likely in UK) (Among those whose program includes continuous monitoring protocols)

Facilitating Payments

“Facilitating payments” have been a topic of much discussion in recent years. While still a statutory exception to payments or conduct otherwise in violation of the FCPA, facilitating payments are not authorized in the UK Bribery Act 2010, nor are they favored by the OECD.

For these and perhaps other reasons, almost all of our 2010 respondents either prohibit facilitating payments outright or prohibit the payments with an exception only for personal safety concerns. Only 9 percent of UK respondents and 13 percent of U.S. respondents allow facilitating payments. This is a substantial decrease from our prior survey results.

Companies overwhelmingly prohibit facilitating payments

*Not asked in 2008 U.S.

Note: May not equal 100% due to rounding.

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Communications Plans

Our results indicate that communication and training programs will be the areas of greatest focus in AB&C compliance efforts over the next 12–24 months among our respondents.

<table>
<thead>
<tr>
<th>Greatest focus of AB&amp;C compliance programs over next 12–24 months</th>
<th>2010 UK</th>
<th>2010 U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication and training programs</td>
<td>39%</td>
<td>22%</td>
</tr>
<tr>
<td>Continuous monitoring and internal audit protocols</td>
<td>15%</td>
<td>22%</td>
</tr>
<tr>
<td>Conduct anti-bribery and corruption compliance risk assessments</td>
<td>11%</td>
<td>16%</td>
</tr>
<tr>
<td>Written anti-bribery and corruption policies and procedures</td>
<td>12%</td>
<td>13%</td>
</tr>
<tr>
<td>“Right to audit” clauses are incorporated into third-party contracts</td>
<td>7%</td>
<td>5%</td>
</tr>
<tr>
<td>Periodic compliance certifications</td>
<td>5%</td>
<td>6%</td>
</tr>
<tr>
<td>A committee responsible for overseeing compliance with anti-bribery and corruption regulations</td>
<td>2%</td>
<td>7%</td>
</tr>
<tr>
<td>A full-time dedicated anti-bribery and corruption compliance officer</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Whistleblower mechanisms (i.e., compliance or ombudsman hotline)</td>
<td>2%</td>
<td>4%</td>
</tr>
<tr>
<td>Other</td>
<td>4%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Note: May not equal 100% due to rounding.

Endemic Corruption

More than 70 percent of respondents (73 percent in the UK and 70 percent in the U.S.) agreed there are places in the world where business cannot be done without engaging in bribery and corruption. The respondents who disagreed (27 percent in the UK, 28 percent in the U.S.), nevertheless consistently stated their respective organizations chose not to conduct business in particular countries because of bribery and corruption concerns. This response indicates some improvement among UK respondents from 2009 results in which 38 percent of respondents answered this question in the affirmative.

Many agree there are places in the world where business cannot be done without engaging in bribery and corruption

About 3 in 10 have chosen not to do business in a country due to bribery and corruption issues (Among those who disagreed there are places in the world where business cannot be done without engaging in bribery and corruption).
To mitigate the risk of doing business in countries in which bribery and corruption is perceived to be endemic, our respondents' favored strategy was to provide additional training (43 percent of UK, 49 percent of U.S. respondents), with enhanced internal controls, more closely monitoring operations, conducting diligence on third parties, and obtaining compliance certifications all following closely. An additional risk mitigation strategy—selected by 32 percent of our UK and 25 percent of our U.S. respondents—was to not do business in certain countries.

Almost half say companies should provide training to mitigate bribery and corruption risks (Among those who agree there are places in the world where business cannot be done without bribery and corruption)
Continuous Monitoring – High Growth Markets

Roughly half of respondents reported that continuous monitoring, including a forensic data analytic component, was a “highly” or “mostly” effective AB&C compliance program element in high growth markets.

This percentage jumps to 75 percent or 80 percent when “moderate” effectiveness is included. The remaining approximately 20 percent of respondents have no continuous monitoring program in place. Thus, almost all respondents with a continuous monitoring protocol in place believe it is moderately, mostly, or highly effective in high growth markets.

About half say continuous monitoring is highly/mostly effective in high-growth and emerging markets such as China, Brazil, India, and Vietnam (Among those whose continuous monitoring protocols include proactive forensic data analysis)

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Conclusion

Multiple countries are enacting or enhancing AB&C statutes and penalties. Regulatory authorities around the world, in increasing numbers, are continuing to investigate and prosecute cases involving bribery and corruption. Multinational companies, large and small, continue to find themselves the subject of criminal and civil enforcement proceedings. Senior management of those organizations are in the unenviable position of explaining to Boards of Directors, other governing authorities, and shareholders how AB&C compliance shortcomings occurred and why they won’t happen again. Our survey results highlight recent compliance developments and challenges, and we are confident that continued attention by senior management, Boards of Directors, and other governing bodies to AB&C compliance efforts, i.e., preventing, detecting, and responding to bribery and corruption, will pay dividends in the future.
KPMG Forensic℠ commissioned a survey of 214 executives (106 in the U.S., 108 in the UK) who consider themselves “one of the most senior persons in charge of day-to-day AB&C matters at their company.”

Executives represented companies across industries, with 200 employees or more and annual revenue of $300 million (U.S.) or £200M (UK) or more, that are subject to AB&C regulations, such as the FCPA and the UK Bribery Act 2010. The telephone survey was conducted during October and November 2010 by Ipsos MORI (UK) and Penn Schoen Berland (U.S.).

Where possible, this survey report includes comparisons with the most recent prior survey results: UK 2009 (109 respondents) and U.S. 2008 (103 respondents).
Geographic distribution of revenues

- **2010 Total (n = 208)**
  - Americas: 14%
  - Europe, Middle East, and Africa: 46%
  - Asia Pacific: 40%

- **2010 UK (n = 107)**
  - Americas: 16%
  - Europe, Middle East, and Africa: 18%
  - Asia Pacific: 66%

- **2010 U.S. (n = 101)**
  - Americas: 12%
  - Europe, Middle East, and Africa: 13%
  - Asia Pacific: 75%

Annual revenue (UK)

- **2010 UK (n = 108)**
  - £200 million < £300 million: 34%
  - £300 million < £600 million: 13%
  - £600 million < £6 billion: 22%
  - > £6 billion: 21%

Annual revenue (U.S.)

- **2010 U.S. (n = 106)**
  - $300 million < $500 million: 22%
  - $500 million < $1 billion: 15%
  - $1 billion < $10 billion: 22%
  - > $10 billion: 40%

**Note:** May not equal 100% due to rounding.
### Respondent title

#### 2010 Total (n = 214)

- Compliance director, manager, officer, head of..., Ethics and..., Risk and...
- General Counsel/Chief Counsel/Head of Legal/VP Legal
- CFO/Financial Director/Financial Controller
- Company Secretary
- Head of Internal Audit/Chief Internal Audit Executive
- Other directors – commercial, sales, business, main board
- President/CEO/MD
- Other

#### 2010 UK (n = 108)

- Compliance director, manager, officer, head of..., Ethics and..., Risk and...
- General Counsel/Chief Counsel/Head of Legal/VP Legal
- CFO/Financial Director/Financial Controller
- Company Secretary
- Head of Internal Audit/Chief Internal Audit Executive
- Other directors – commercial, sales, business, main board
- President/CEO/MD
- Other

**Note:** May not equal 100% due to rounding.

### Primary Business Activity

<table>
<thead>
<tr>
<th>Primary Business Activity</th>
<th>2010 UK</th>
<th>2010 U.S.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>16%</td>
<td>35%</td>
</tr>
<tr>
<td>Banking &amp; Finance</td>
<td>15%</td>
<td>12%</td>
</tr>
<tr>
<td>Electronics, Software &amp; Business Services</td>
<td>11%</td>
<td>9%</td>
</tr>
<tr>
<td>Real Estate &amp; Construction</td>
<td>9%</td>
<td>7%</td>
</tr>
<tr>
<td>Communication &amp; Media</td>
<td>8%</td>
<td>6%</td>
</tr>
<tr>
<td>Retail</td>
<td>6%</td>
<td>8%</td>
</tr>
<tr>
<td>Energy &amp; Chemicals</td>
<td>6%</td>
<td>5%</td>
</tr>
<tr>
<td>Insurance</td>
<td>6%</td>
<td>1%</td>
</tr>
<tr>
<td>Food</td>
<td>5%</td>
<td>1%</td>
</tr>
<tr>
<td>Import/Export</td>
<td>2%</td>
<td>4%</td>
</tr>
<tr>
<td>Transport</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Healthcare</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td>Industrial Products &amp; Automotive</td>
<td>1%</td>
<td>3%</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>0%</td>
<td>3%</td>
</tr>
<tr>
<td>Government/ Education</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>11%</td>
<td>2%</td>
</tr>
</tbody>
</table>

**Note:** May not equal 100% due to rounding.
About KPMG Forensic

KPMG Forensic is comprised of multidisciplinary professionals from member firms of KPMG International that assist clients in achieving the highest levels of business integrity through the prevention, detection, and investigation of fraud and misconduct and by avoiding and resolving disputes. Our professionals not only help clients discover the facts underlying concerns about fraud and misconduct but they also assist our clients in assessing and mitigating the vulnerabilities to such activities. We also deliver a broad range of services to help prevent and resolve commercial disputes including the assessment of damages; the resolutions of accounting, audit, and finance-related issues; and expert witness services.

Using a wide-range of sophisticated technology tools, KPMG Forensic helps organizations address the risks and costs involved with evidence and discovery management as well as the acquisition, management, and analysis of large data sets. Our professionals work alongside clients to handle information from its creation to its preservation, collection, analysis, and presentation in discovery. We also apply computer forensic and data analysis techniques to assist with detecting fraud and misconduct. To support these services, member firms of KPMG International operate secure data centers in the United States, the United Kingdom, Canada, Australia, India, South Africa, Germany, and Austria.

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Contact us
If you have any questions about this document or would like assistance on any of the issues covered in this survey, please contact one of these KPMG professionals.

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