

17 International business attitudes to corruption

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In mid-2006 Control Risks in association with Simmons & Simmons commissioned the fourth in a series of surveys on international business attitudes to corruption. The purpose of the survey was to analyse the contrasting experiences of companies from seven different jurisdictions, drawing on comparisons with the previous survey in 2002 (see *Global Corruption Report 2004*).

IRB Ltd carried out the survey, and conducted a total of 350 telephone interviews with 50 companies in Brazil, France, Germany, Hong Kong, the Netherlands, the United Kingdom and the United States. Brazil and France had not been covered in the 2002 survey. All respondents were senior decision-makers at or near board level, and all the companies operate internationally.²

Lost business

The survey showed that corruption remains a major cost to international business: 43 per cent of respondents believed that their companies had failed to win a contract, or gain new business, because a competitor had paid a bribe in the previous five years. As many as a third believed they had lost business in this way in the previous 12 months.

However, there were wide disparities between jurisdictions. In Hong Kong, 76 per cent of companies believed that they had failed to win international business because of bribery in the previous five years, and 66 per cent in the last year – giving it the worst result. Even in the United Kingdom a quarter of companies claimed they had lost business to bribery in the previous five years. In the United States, the Netherlands and Hong Kong there was a noticeable increase in the percentage of companies reporting lost business compared to 2002.

Impact of anti-bribery legislation

Apart from Hong Kong, all the jurisdictions surveyed had ratified the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. However, nearly half of respondents confessed to being ‘totally ignorant’ of

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² A detailed analysis of the findings is published on www.control-risks.com

Table 1: Percentage of companies believing they lost business because a competitor had paid a bribe ...

	in the last 12 months		in the last 5 years	
	2006 findings	2002 findings	2006 findings	2002 findings
Hong Kong	66	56	76	60
Netherlands	26	24	46	40
US	20	18	44	32
Brazil	42	N/A	38	N/A
Germany	28	24	36	36
France	32	N/A	34	N/A
UK	22	16	26	26

their country's legislation on foreign bribery. Levels of ignorance were highest in Brazil, but even in the United States, which has nearly 30 years of experience with the Foreign Corrupt Practices Act (FCPA), more than 40 per cent of respondents confessed to being totally ignorant of the law, and a further 20 per cent had no more than a 'vague awareness'. In the United Kingdom awareness levels appear to have declined since the 2002 survey when 68 per cent of respondents claimed familiarity with the country's anti-corruption laws. Elsewhere, knowledge of the law is broadly similar to before.

Reviews of anti-corruption procedures

Despite these low levels of awareness, 74 per cent of US companies said that they had reviewed internal procedures in the last three years in the light of the increased international focus on corruption. This high percentage is likely to be the combined result of stricter enforcement of the FCPA and the impact of the Sarbanes-Oxley corporate governance reforms. In Germany, just over half the companies surveyed had reviewed procedures. This compares favourably with the results of the 2002 survey, and may reflect the impact of a series of high-profile scandals and investigations in Germany in 2005 and 2006. Trailing were France and Brazil where only 36 per cent and 12 per cent of companies, respectively, had reviewed internal procedures in the past three years in response to international attention to corruption.

Almost all Western companies now have business codes explicitly forbidding the payment of bribes to secure business, and a majority ban facilitation payments. This is true even in the United States where the FCPA does not include facilitation payments in its definition of 'bribery'. In Hong Kong, however, only half the companies have codes forbidding bribes and facilitation payments, while in Brazil only one quarter per cent have anti-bribery codes and just under one third per cent ban facilitation payments.

'Alternatives' to bribery?

One of the most common allegations in the international corruption debate is that companies frequently circumvent anti-bribery legislation by using intermediaries – such as commercial agents or joint venture partners – to pay bribes on their behalf. The survey shows that a majority of businesspeople believe that companies from their own countries engage in this practice either 'regularly' or 'occasionally'. This is despite the fact that the OECD convention prohibits bribes paid 'directly or indirectly' and that there is a substantial body of FCPA case law concerning companies that have been successfully prosecuted for paying bribes via middlemen.

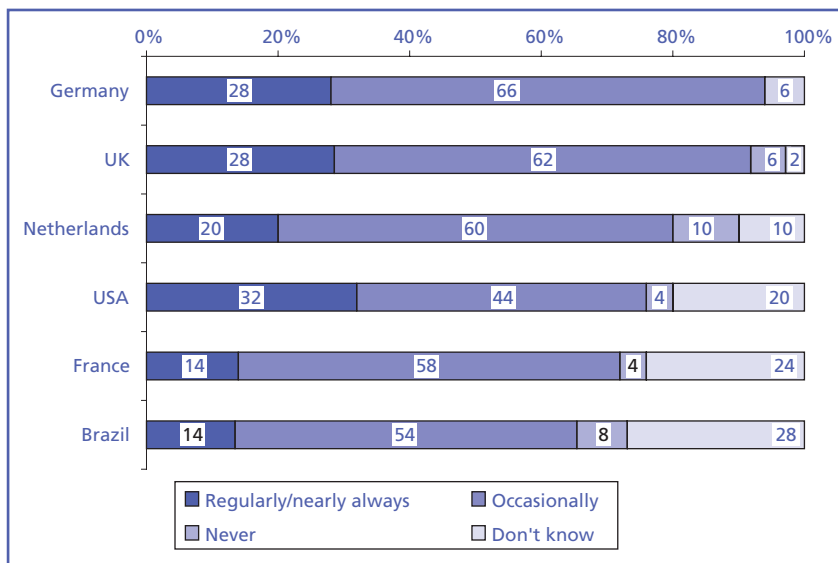


Figure 1: Respondents believing that corporations from their own country circumvent legislation on transnational bribery by using intermediaries

Expectations for the future

Companies' expectations for the future range from realistic to pessimistic. Overall, 42 per cent expected current corruption levels to remain the same. The optimists (20 per cent) who expected corruption levels to decrease were outnumbered by the pessimists (32 per cent) who expected them to increase. The pessimists were most numerous in France (46 per cent), and the optimists most numerous in the United States (54 per cent).