



**ANTI-CORRUPTION STRATEGY
FOR THE LEGAL PROFESSION**
IBA • OECD • UNODC

The Privileged Profession: Risks Faced By Legal Professionals Advising in International Matters

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UNODC
United Nations Office on Drugs and Crime

Panelists

- James Parkinson, BuckleySandler (Washington, D.C.)
- Homer Moyer, Miller & Chevalier (Washington, D.C.)
- Thierry Marembert, Kiejman & Marembert (Paris)
- Bradley Simon, Simon & Partners (New York)



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Overview of Session

- Introduction
- Anti-Corruption Strategy for the Legal Profession
- Review of Potential Lawyer Missteps and Examples of Bad Advice
- Consequences of an Error
- Trends: Future Risks
- Case studies

Anti-Corruption Strategy for the Legal Profession

- **Purpose of Segment**
 - Describe the IBA's initiative regarding risks facing legal professionals
 - Review survey and results
 - Legal profession's perception of the presence and impact of corruption
 - Provide context for the issues

Introduction to the Anti-Corruption Strategy: The Survey

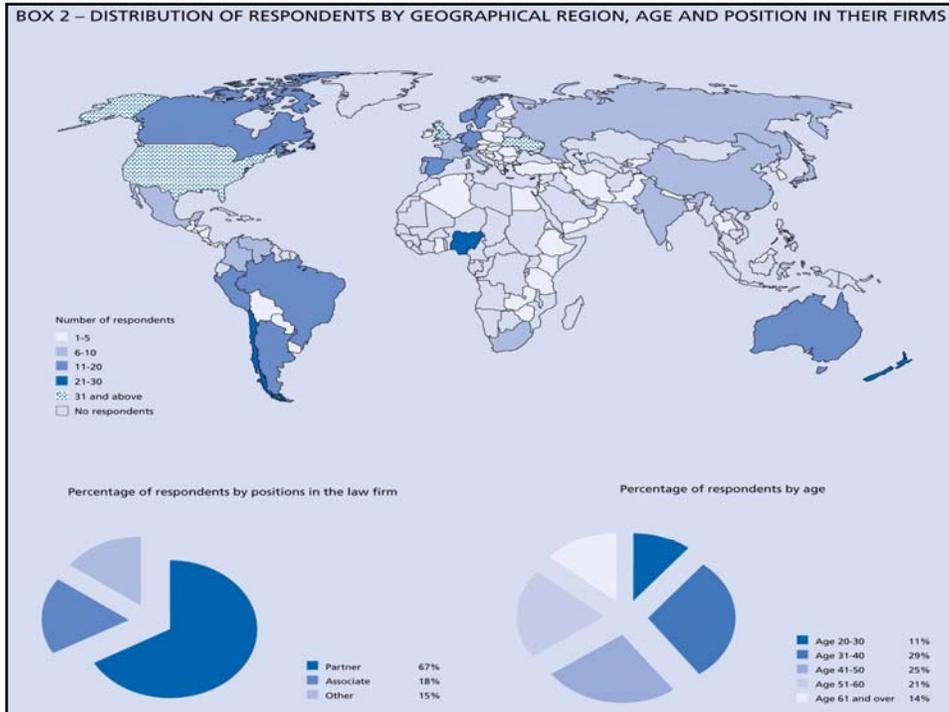
In 2010, the International Bar Association surveyed legal professionals across the globe, seeking to assess four key areas:

1. The legal profession's perception of the impact of corruption on their profession at home and abroad
2. Perceptions of the risks associated with international corruption for the legal profession
3. Level of awareness of the international anti-corruption regulatory framework that exists to address these risks
4. The role which local bar associations, law societies and law firms play in addressing the challenge of corruption in the legal profession



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BOX 2 – DISTRIBUTION OF RESPONDENTS BY GEOGRAPHICAL REGION, AGE AND POSITION IN THEIR FIRMS



Anti-Corruption Strategy (cont'd)

1) The legal profession's perception of the impact of corruption on their profession at home and abroad

- Roughly half of all respondents perceive corruption to be an issue in the legal profession in both their home and in neighboring jurisdictions.

CHART 1 – DO YOU THINK CORRUPTION IS AN ISSUE IN THE LEGAL PROFESSION IN YOUR JURISDICTION?

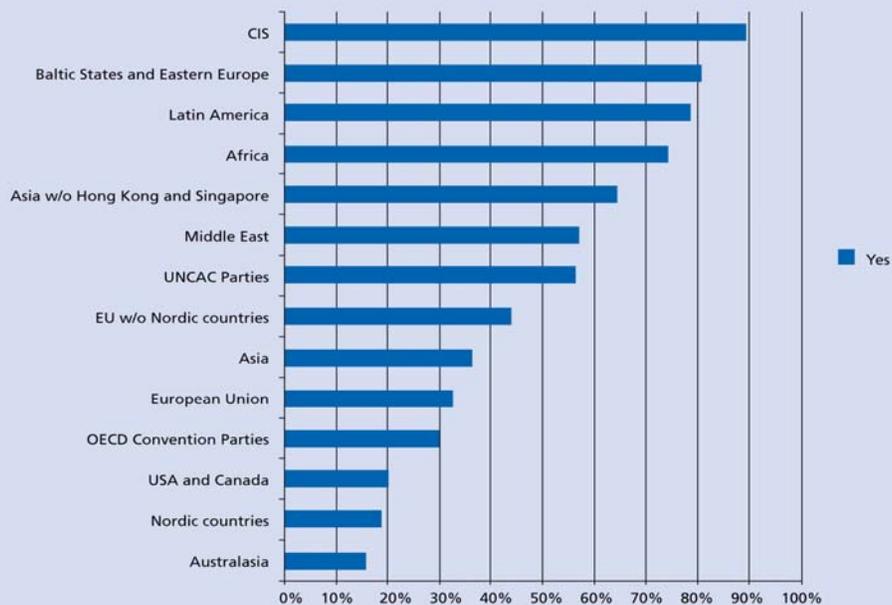


CHART 2 – DO YOU THINK CORRUPTION IS AN ISSUE IN THE LEGAL PROFESSION IN YOUR JURISDICTION?

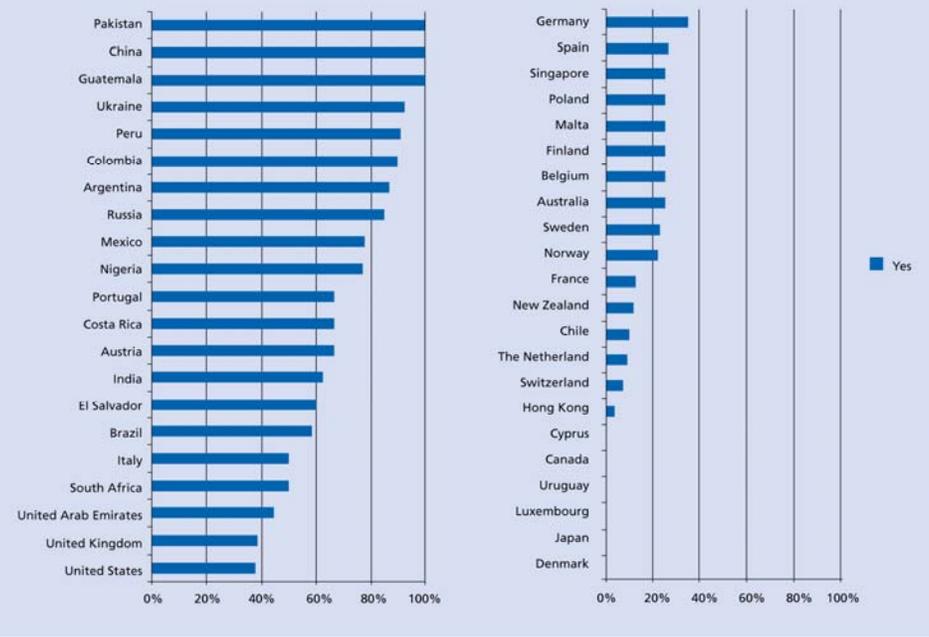
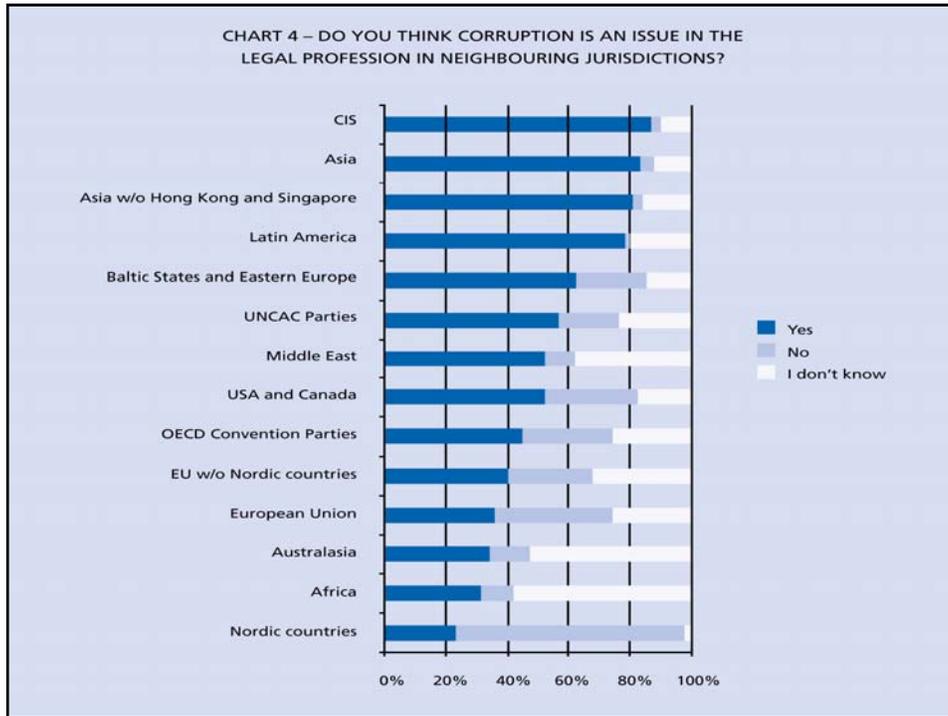


CHART 3 – DO YOU THINK CORRUPTION IS AN ISSUE IN THE LEGAL PROFESSION IN YOUR JURISDICTION?





Anti-Corruption Strategy (cont'd)

2) Perceptions of the risks associated with international corruption for the legal profession

- Respondents recognise that a significant number of lawyers are approached to act as an agent or middleman in a transaction that could reasonably be suspected to involve international corruption.
- There is also the view that international corruption negatively affects the ability to compete for business in the legal profession.

Anti-Corruption Strategy (cont'd)

(A) Perceived impact of corruption on foreign investment

- QUESTION: Would refusing to pay bribes reduce the chances of foreign companies or investors of successfully conducting business in their country
- 'Certainly', 'very likely' or 'likely': Russia (60 per cent), India (62.5 per cent), Mexico (66.6 per cent), China (71.4 per cent), Venezuela (78 per cent), Ukraine (80 per cent) and Nigeria (91 per cent)
- 'Unlikely' or 'definitely not': Sweden and Switzerland (100 per cent), Canada and Norway (95 per cent), Hong Kong (86.7 per cent), Denmark and Spain (85 per cent), and the US and the UK (84 per cent).

(2) Business and competitive risks

CHART 5 – HAVE YOU EVER BEEN APPROACHED TO ACT AS AN AGENT OR MIDDLEMAN IN A TRANSACTION THAT COULD REASONABLY BE SUSPECTED TO INVOLVE INTERNATIONAL CORRUPTION, EG, FOREIGN BRIBERY?

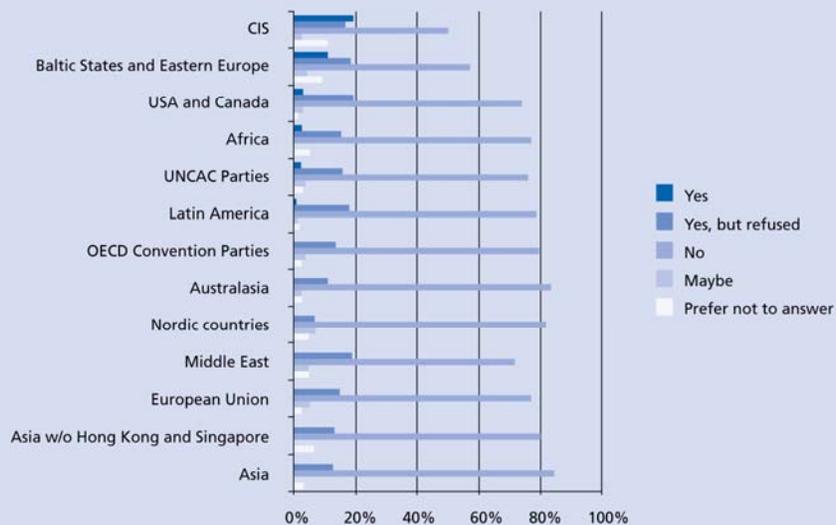


CHART 7 – DO YOU KNOW OF ANY LEGAL PROFESSIONALS IN YOUR JURISDICTION WHO HAVE BEEN INVOLVED IN INTERNATIONAL CORRUPTION OFFENCES, EG, FOREIGN BRIBERY?

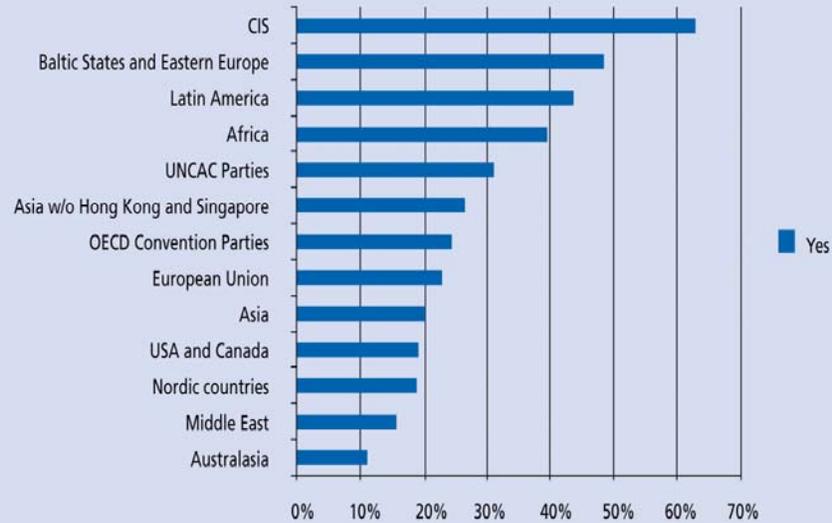


CHART 8 – DO YOU BELIEVE THAT YOU HAVE LOST BUSINESS TO OTHER LAW FIRMS OR INDIVIDUAL LAWYERS WHO ARE PREPARED TO MAKE ILLICIT PAYMENTS TO GOVERNMENT OFFICIALS ON BEHALF OR FOR THE BENEFIT OF FOREIGN COMPANIES/INVESTORS?



Anti-Corruption Strategy (cont'd)

3) Level of awareness of the international anti-corruption regulatory framework

- There is a significant lack of awareness of the international anti-corruption instruments among legal professionals.
- However, awareness of national legislation with extraterritorial applicability is slightly higher and this legislation is generally considered effective in preventing inbound and outbound corruption.

CHART 9 – AWARENESS OF INTERNATIONAL CONVENTIONS ON CORRUPTION AND BRIBERY BY REGION

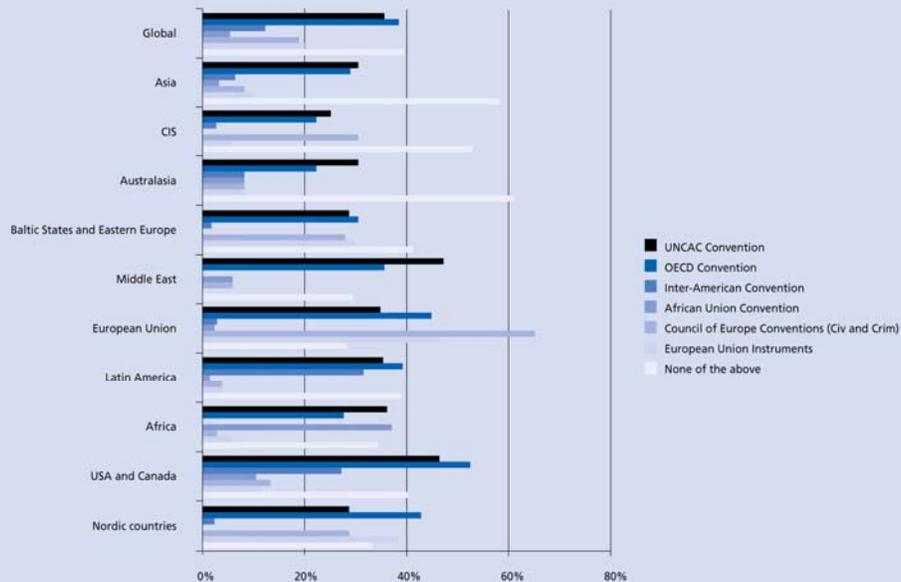
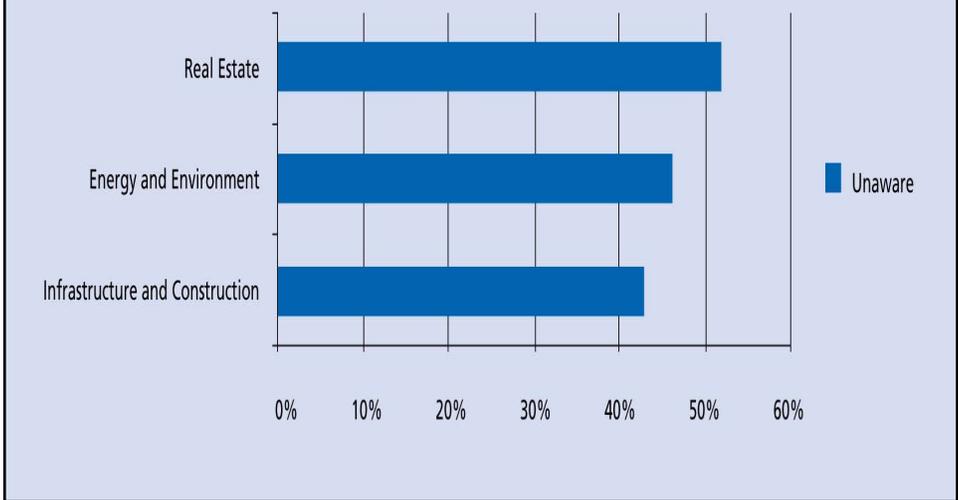


CHART 10 – AWARENESS OF INTERNATIONAL CONVENTIONS BY STATE PARTIES



CHART 11 – HOW RESPONSES TO 'PLEASE SELECT THE INTERNATIONAL ANTI-CORRUPTION INSTRUMENTS YOU ARE FAMILIAR WITH' ARE DISTRIBUTED WITH THE PRACTICE AREA OF RESPONDENTS



Anti-Corruption Strategy (cont'd)

Awareness of National Legislation with Extraterritorial Application

- In all, 40% of survey respondents were unaware of the FCPA and its scope, while over 70% were unaware of the UK Bribery Act
- Awareness and age: younger respondents show less awareness than more senior respondents.

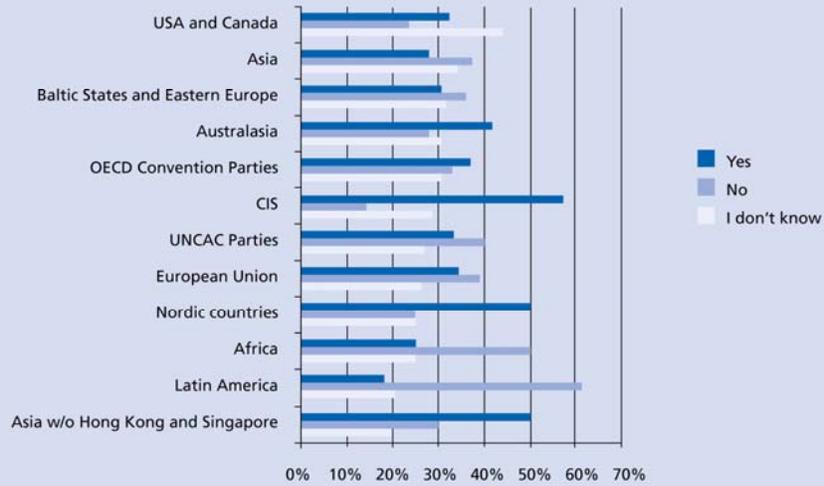
Anti-Corruption Strategy (cont'd)

4) The role of local bar associations, law societies and law firms in addressing the challenge of corruption

- Respondents do not perceive their bar associations, law societies and law firms as actively engaging their professionals on issues of international bribery and corruption.

1. Initiatives by bar associations/law societies

CHART 13 – DOES YOUR BAR ASSOCIATION OR LAW SOCIETY GUIDELINES ADDRESS SPECIFICALLY THE ISSUE OF INTERNATIONAL CORRUPTION, EG, FOREIGN BRIBERY?



2. Initiatives by law firms

CHART 14 – WHERE DOES DEALING WITH CORRUPTION AND FOREIGN BRIBERY RISKS RANK WITHIN THE PRIORITIES OF YOUR LAW FIRM?

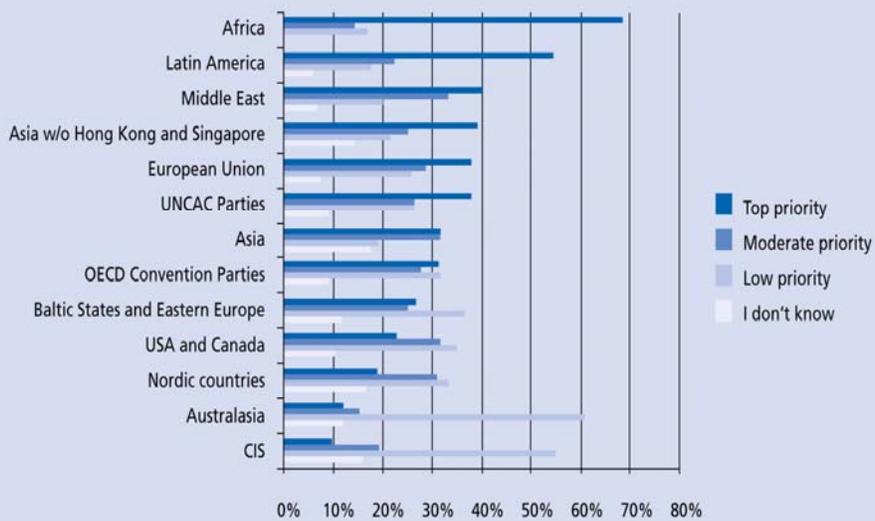


CHART 16 – DOES YOUR LAW FIRM HAVE A CLEAR AND SPECIFIC ANTI-CORRUPTION POLICY?

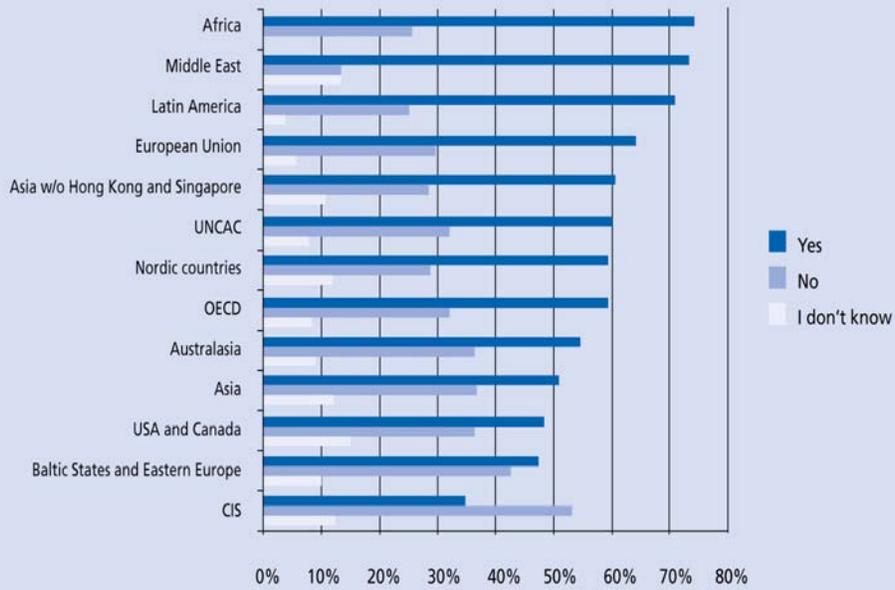
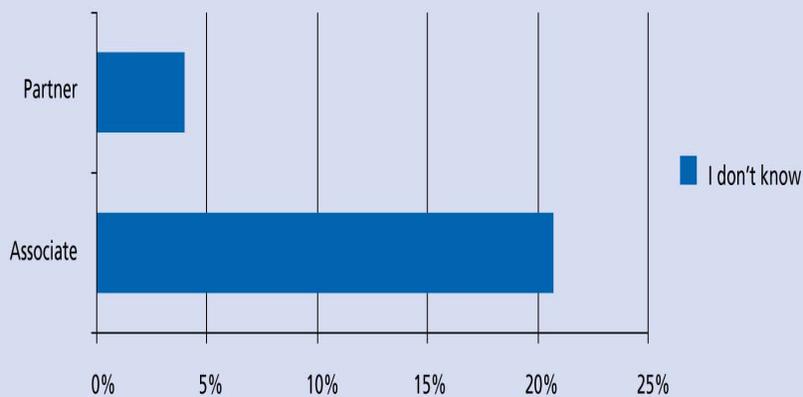
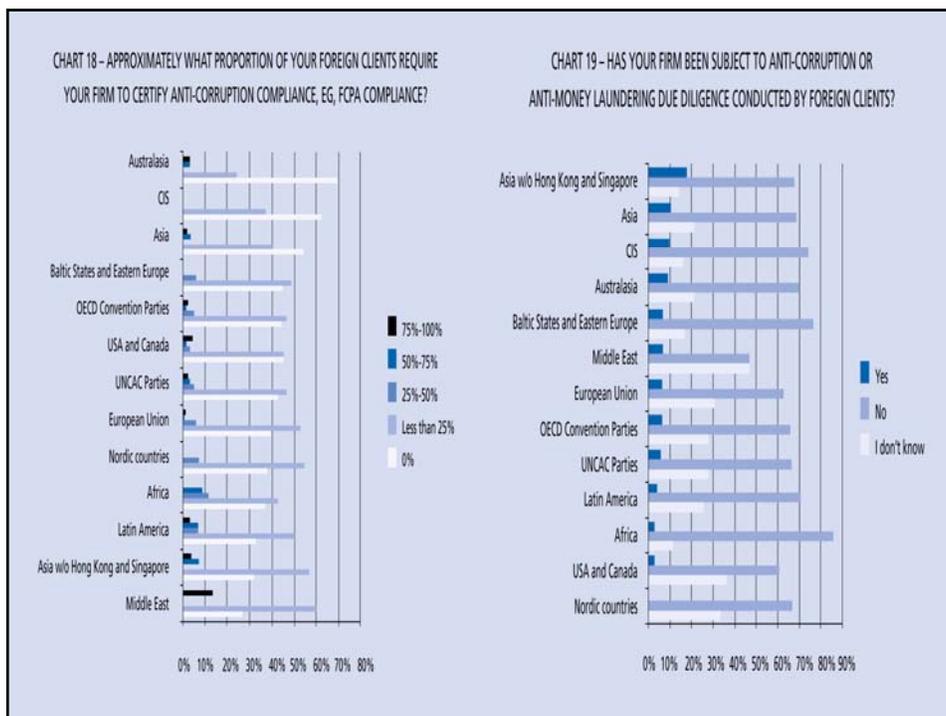


CHART 17 – HOW RESPONSES TO 'DOES YOUR LAW FIRM HAVE A CLEAR AND SPECIFIC ANTI-CORRUPTION POLICY?' ARE DISTRIBUTED WITH RESPECT TO THE POSITIONS HELD BY RESPONDENTS IN LAW FIRMS





Anti-Corruption Strategy: Summary of Findings

1) Perceptions of levels of corruption on the legal profession at home and abroad

- Roughly half of all respondents perceive corruption to be an issue in the legal profession in both their home and in neighbouring jurisdictions.

2) Risks associated with international bribery and corruption

- Respondents recognise that a significant number of lawyers are approached to act as an agent or middleman in a transaction that could reasonably be suspected to involve international corruption. There is also the view that international corruption negatively affects the ability to compete for business in the legal profession.

3) Level of awareness of the international anti-corruption regulatory framework

- There is a significant lack of awareness of the international anti-corruption instruments among legal professionals. However, awareness of national legislation with extraterritorial applicability is slightly higher and this legislation is generally considered effective in preventing inbound and outbound corruption.

4) The role of local bar associations, law societies and law firms in addressing the challenge of corruption

- Respondents do not perceive their bar associations, law societies and law firms as actively engaging their professionals on issues of international bribery and corruption. Where such efforts are being made, younger and less-senior legal professionals often fail to pick up the message.

Anti-Corruption Strategy: Recommendations

- Undertake further research on the levels of corruption in the legal profession
- Undertake industry-wide anti-corruption awareness-raising and training activities
- Compliance programmes for legal professionals must: (a) include measures to combat bribery and international corruption; and (b) be disseminated through the firm.

Anti-Corruption Strategy: Status

- Extensive interaction with national bar associations
- Training workshops conducted in 13 countries
 - Argentina, Brazil, Chile, Colombia, Mexico, Peru, Venezuela
 - Indonesia, Japan, Malaysia, South Korea,
 - South Africa
 - Italy, Russia, Turkey
- Academic partnerships formed to develop anti-corruption syllabus, including law school lectures

Risks Faced by Legal Professionals

Potential Missteps by Lawyers

- Active involvement in making an improper payment
- Sanctioning the making of an improper payment
- Failing to recognize “red flags”
- Being unaware of, or misinformed about, applicable law – risks for deal lawyers, M&A lawyers, tax lawyers, litigators, in-house counsel
- Giving bad advice

Common Examples of Bad Advice

- Dangerously reassuring advice
 - FCPA and other national laws do not apply to foreign companies
 - Prohibitions apply only to government officials
 - No violation without criminal intent
 - No conflict of interest in representing multiple parties

Common Examples of Bad Advice (cont'd)

- Excessively alarmist advice
 - Anti-corruption laws prohibit charitable contributions
 - The UK Bribery Act asserts global, if not universal, jurisdiction
 - The FCPA prohibits paying for coffee or a taxi ride for an official
 - Paying a \$20 facilitating payment risks criminal prosecution

Potential Consequences of Bad Advice

- Losing the client, possibly immediately
- Being sued for malpractice by the client
- Being sued by an adversely affected third party, possibly in a jury trial
- Being sued by shareholders, of Audit Committee members who are being sued by shareholders
- Loss of credibility with enforcement authorities
- Being prosecuted yourself

NOTE: One can lose a client by providing *good* advice, as in conducting an independent investigation *independently*

Future Risks for Anti-Corruption Lawyers

- Advice regarding more than one applicable law or international convention
- Advising clients subject to parallel investigations in different jurisdictions (substantive differences, privacy rules, privilege considerations, disclosure and settlement practices)
- How to investigate thoroughly by cost-effectively
- Advice on aggressive, effective remediation
- Advice on preventative measures – the art of designing a successful compliance program

RISK SCENARIO

CASE STUDIES

Case Study – Background

- You have been retained by a major investment company to assist in setting up a subsidiary in Country A, so that the client can participate in an infrastructure project in Country A.
- Your client is headquartered in the U.S. and it carries out business around the world.
- The unit that has retained you is located here locally.

Case Study 1: Local Law Firm for Business License

- Applications for business licenses in Country A take a long time and can be difficult to obtain. It is well known that the government authorities in Country A are slow and inefficient, and they always raise questions on applications.
- You have engaged a local law firm to assist you with the process because they are well-established and have a good reputation.
- The law firm reports success after a few weeks and your client obtains a business license.
- The law firm partner later tells you that he made a small cash payment to a low-level government official to speed up the process and avoid any unnecessary questions or clarifications from the authorities.
 - The law firm partner reports that payments like this are so common in Country A that they are considered standard practice in the business community.
 - Although such payments are prohibited by the law of Country A, people seldom get caught and / or persecuted.

Case Study 2: Client Retains Consultant

- Since you did such a great job setting up the new local company, the client asks you to stay on and assist in bidding on the contract for the infrastructure project in Country A.
- Without your involvement, the client engaged a local consultant to help with the process who does not appear to have relevant qualifications for this type of work.
- The consultant requests a substantial payment, half of which is to be paid in advance, which he claims is necessary for him to carry out his duties.
- Consultant does not describe what duties will be, except to assist with the bid.

Case Study 3: Your Personal Contacts

- By coincidence, a good friend of yours is a government official in the same department that will be evaluating the bid.
- You have never mentioned this relationship to the client.
- Your client indicates that he has knowledge of this relationship and tells you he is willing to offer your friend cash payments or a lucrative job in the company if he is able to help your client win the infrastructure project.

Case Study: Action for Malpractice

- A Dutch company opens warehousing/logistics center near Panamanian port
- Around the time of the opening, the company makes a donation to the campaign of a mayoral candidate for the port city
 - New York-based counsel involved in the financing of the project suggested routing payment through a Cayman company
- The Dutch company later seeks to sell the asset. During the acquiring company's diligence, it is discovered that the campaign contribution ended up financing the mayoral candidate's house.

Questions?

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| James Parkinson + 00 202 / 349-7955 jparkinson@buckleysandler.com | Homer Moyer + 00 202 / 626-6020 HMoyer@milchev.com |
| Thierry Marembert + 33 01.45.55.09.00 tmarembert@kiejman-marembert.com | Bradley Simon + 00 212 / 332-8900 bradsimon@simonlawyers.com |