

## Prevention: Frameworks to Encourage and Recognise Anti-Bribery Compliance

(17:00 - 18:15, CC 1)

### Key Facts

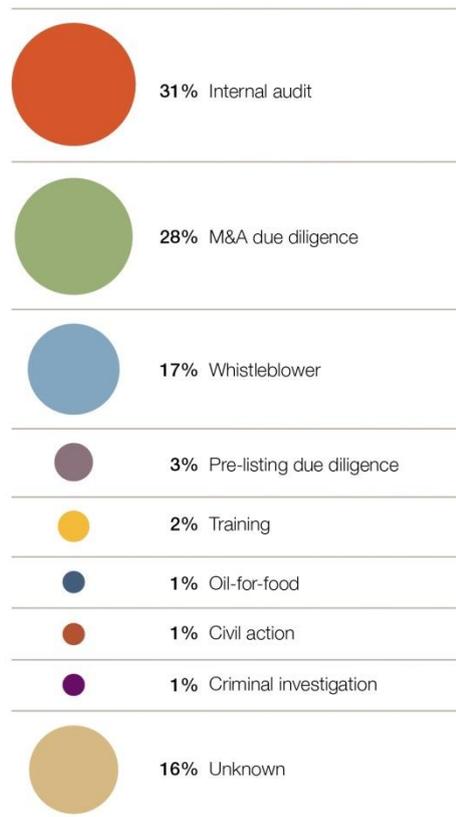
- Robust anti-bribery compliance procedures are essential to ensuring that businesses are well placed to prevent, detect, and respond to bribery in international business.
- In Ernst & Young's 2015 survey of 3800 respondents across 38 countries, 42% reported that their company did not have an anti-bribery policy in place, or did not know if there was one.
- The Working Group on Bribery promotes the development and implementation of anti-bribery compliance programmes through its peer monitoring and its government-endorsed guidance for businesses.
- Mitigated sanctions, deferred prosecution agreements, and partial or full legal defences are used by some countries to incentivise companies to develop compliance programmes.
- Article 2 of the Anti-Bribery Convention requires countries to hold companies liable for foreign bribery.

### Setting the Scene

The OECD and the Working Group on Bribery have been instrumental in promoting the idea of punishing companies for many types of wrongful conduct, not just foreign bribery. Prior to the ratification of the Convention, most countries, including much of Europe, had no concept of criminal responsibility for companies in their national legal systems, despite the fact that corporate structures were increasingly being used as conduits for illegal activity. Now, all Parties to the Convention, with the exception of two, have in place a corporate liability regime for foreign bribery. However, the level of enforcement of corruption laws against companies is uneven across the Parties to the Convention. Higher enforcement levels would lead to stronger compliance.

The private sector has a central role to play in preventing, detecting, and responding to bribery in international business. Recognising this, in 2009 the OECD and the Working Group on Bribery released Good Practice Guidance on Internal Controls, Ethics, and Compliance. This was the first inter-governmental anti-corruption guidance for businesses and sets out the fundamental

### How did self-reporting companies become aware of foreign bribery in their business operations?



Source: OECD Foreign Bribery Report (2014)

elements that - at a minimum - should be included in companies' anti-bribery compliance programmes in order to effectively prevent and detect bribery. Countries efforts to raise awareness of this guidance are closely monitored by the Working Group on Bribery.

In addition, the OECD has provided input as a "liaison organisation" on the soon to be released ISO 37001 on Anti-Bribery Management Systems, to ensure that it builds on work done on this area at the OECD.

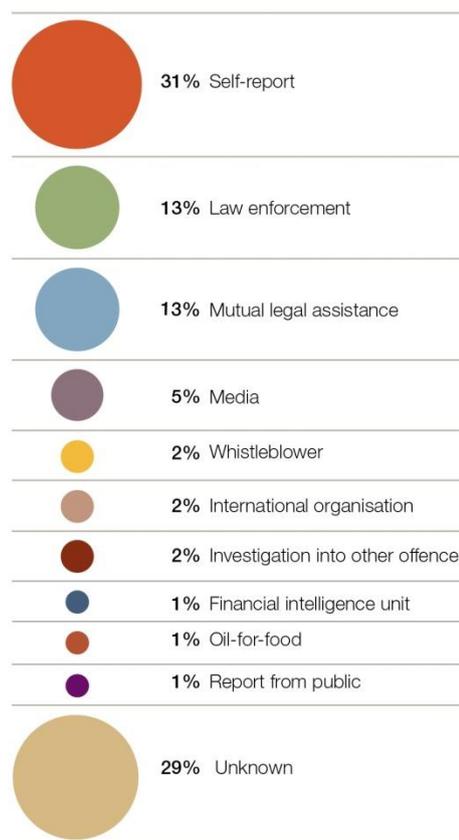
### How can the private sector prevent, detect, and respond to bribery in international business?

Foreign bribery is a crime that is by its very nature complex and covert. Therefore, detecting foreign bribery cases is one of the major obstacles to effective enforcement of anti-bribery legislation. Of the 427 enforcement actions studied in the OECD's Foreign Bribery Report, 31% were detected through self-reporting compared with only 13% by law enforcement. Of those that self-reported to law enforcement authorities, 137 were companies that discovered foreign bribery in their international business operations. The two main sources of detection for these companies were internal audits (31%) and due diligence in the context of mergers and acquisitions where foreign bribery was detected in the target company (28%).

These figures demonstrate the vital role played by the accounting and auditing profession in detecting bribery, and the importance of raising awareness of foreign bribery among these professions. It also highlights the need for effective compliance programmes with clear reporting mechanisms that enable the company to elicit early, bona fide information of suspected bribery.

Despite the known benefits of robust anti-corruption policies, their low prevalence among the private sector remains a concern. Ernst and Young's 2015 fraud and corruption survey found that while more than half of all respondents believed that bribery and corruption is widespread in their country, 42% reported that their company did not have an anti-bribery policy in place, or did not know if one was in place.

### How are foreign bribery cases detected by law enforcement?



Source: OECD Foreign Bribery Report (2014)

## What can countries do to encourage corporate compliance?

Many countries have adopted what are commonly referred to as “compliance incentives”. These are measures taken by governments to acknowledge the efforts made by a corporation to promote business integrity. These measures can vary from taking compliance programmes into account in deciding whether to prosecute or enter into a deferred or non-prosecution agreement, consideration of an organisation’s anti-bribery controls as a complete or partial defence to foreign bribery, or a mitigating factor in sentencing. Anti-bribery programmes may also be considered in a decision to award public advantages or lift debarment measures.

Countries need to actively encourage the private sector to develop procedures in line with the OECD’s Good Practice Guidance on Internal Controls, Ethics, and Compliance. Awareness-raising activities should also highlight the benefits of compliance, including potentially saving the company from both the risk of bribery and the costs involved in exposure and sanctioning.

### Discussion questions

- In light of the high number of companies that either do not have, or are not known to have, anti-bribery compliance programmes, how can countries better incentivise businesses to develop and implement such controls?
- How have countries and the private sector successfully collaborated in the fight against foreign bribery?
- What does the private sector, including small to medium sized enterprises, view as the main challenge to implementing effective anti-bribery compliance programmes?
- Given the vital role played by accountants and auditors in detecting foreign bribery, how can countries better assist and work alongside these professions in combating corruption?