

ANTI-CORRUPTION STRATEGY FOR THE LEGAL PROFESSION

I B A • O E C D • U N O D C

Risks and threats of corruption and the legal profession

Survey 2010





Risks and threats of corruption and the legal profession: Survey 2010

Contents

Introduction	6
<i>A. About the survey</i>	6
<i>B. Survey methodology</i>	7
<i>C. About the authors</i>	7
Survey results	9
<i>A. Perceptions of the impact of corruption on the legal profession at home and abroad</i>	9
1. PERCEPTIONS OF THE IMPACT OF CORRUPTION ON THE LEGAL PROFESSION AT HOME	9
2. PERCEPTIONS OF THE IMPACT OF CORRUPTION ON THE LEGAL PROFESSION IN NEIGHBOURING JURISDICTIONS	11
<i>B. Risks associated with international bribery and corruption</i>	12
1. PERCEIVED IMPACT OF CORRUPTION ON FOREIGN INVESTMENT	12
2. BUSINESS AND COMPETITIVE RISKS	12
<i>C. Level of awareness of the international anti-corruption regulatory framework</i>	16
1. AWARENESS OF INTERNATIONAL ANTI-CORRUPTION INSTRUMENTS	16
2. AWARENESS OF NATIONAL LEGISLATION WITH EXTRATERRITORIAL APPLICATION	18
<i>D. The role of local bar associations, law societies and law firms in addressing the challenge of corruption</i>	20
1. BAR ASSOCIATIONS AND LAW SOCIETIES	20
2. LAW FIRMS	21
Conclusions and recommendations	25
<i>A. Summary of conclusions</i>	25
<i>B. Recommendations</i>	25
Annex 1	27
Annex 2	28
Acknowledgements	29

List of Charts and Boxes

Charts

Chart 1	<i>Do you think corruption is an issue in the legal profession in your jurisdiction? (by regions)</i>	9
Chart 2	<i>Do you think corruption is an issue in the legal profession in your jurisdiction? (by countries)</i>	10
Chart 3	<i>Do you think corruption is an issue in the legal profession in your jurisdiction? (by age)</i>	10
Chart 4	<i>Do you think corruption is an issue in the legal profession in neighbouring jurisdictions?</i>	11
Chart 5	<i>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?</i>	12
Chart 6	<i>In your opinion, what proportion of legal professionals in your jurisdiction would be willing to participate or facilitate international transactions that they recognise as corrupt, eg, foreign bribery?</i>	13
Chart 7	<i>Do you know of any legal professionals in your jurisdiction who have been involved in international corruption offences, eg, foreign bribery?</i>	14
Chart 8	<i>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 of or for the benefit of foreign companies/investors?</i>	14
Chart 9	<i>Awareness of international conventions on corruption and bribery by region</i>	16
Chart 10	<i>Awareness of international conventions by state parties</i>	17
Chart 11	<i>How responses to 'please select the international anti-corruption instruments you are familiar with' are distributed with the practice area of respondents</i>	18
Chart 12	<i>Does your bar association or law society provide specific anti-corruption guidelines for legal professionals?</i>	20
Chart 13	<i>Does your bar association or law society guidelines address specifically the issue of international corruption, eg, foreign bribery?</i>	21
Chart 14	<i>Where does dealing with corruption and foreign bribery risks rank within the priorities of your law firm?</i>	21
Chart 15	<i>How responses to 'where does dealing with corruption and foreign bribery risks rank within the priorities of your law firm' are distributed with respect to the positions held by respondents</i>	22
Chart 16	<i>Does your law firm have a clear and specific anti-corruption policy?</i>	22

<i>Chart 17</i>	<i>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</i>	23
<i>Chart 18</i>	<i>Approximately what proportion of your foreign clients require your firm to certify anti-corruption compliance, eg, FCPA compliance?</i>	23
<i>Chart 19</i>	<i>Has your firm been subject to anti-corruption or anti-money laundering due diligence conducted by foreign clients?</i>	24

Boxes

<i>Box 1</i>	<i>Major findings</i>	6
<i>Box 2</i>	<i>Distribution of respondents by geographical region, age and position in their firms</i>	7
<i>Box 3</i>	<i>International anti-corruption instruments</i>	15
<i>Box 4</i>	<i>Extraterritorial application of the offence of bribing a foreign public official</i>	18
<i>Box 5</i>	<i>Awareness and age</i>	19

Introduction

A. About the survey

In April 2010, the International Bar Association (IBA), in cooperation with the Organisation for Economic Co-operation and Development (OECD) and the United Nations Office on Drugs and Crime (UNODC), launched the *Anti-Corruption Strategy for the Legal Profession*, a project focusing on the role lawyers play in fighting corruption in international business transactions and the impact on the legal practice of international anti-corruption instruments and associated implementing national legislation with extraterritorial application.

A powerful and developed international regulatory framework to combat corruption in all its forms is now in place. It includes international legal instruments and national anti-corruption legislation that applies to corruption cases both at home and abroad. Unfortunately, many lawyers remain unaware of the implications of this international anti-corruption regulatory framework on both their legal practice and on the

legal profession.¹ As a consequence, lawyers may be at risk of violating this framework by, for example, their involvement as intermediaries in corrupt transactions that would leave them exposed to possible criminal liability.

To gain a better understanding of the possible risks the legal profession faces in this ever-developing international anti-corruption regulatory environment, an exploratory survey was conducted among IBA members. The global survey was designed as part of the *Anti-Corruption Strategy for the Legal Profession*. Its objectives are: to explore the level of awareness of the risks of corruption; to investigate the legal profession's awareness of the tools available to mitigate these risks; and to examine the role bar associations, law societies and law firms have in ensuring the legal profession is equipped to engage effectively in the international fight against corruption.

The results of this survey were launched at the 2010 IBA Annual Conference in Vancouver, Canada.

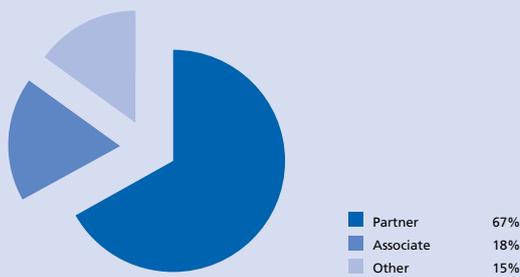
BOX 1 – MAJOR FINDINGS

- Nearly half of all respondents stated corruption was an issue in the legal profession in their own jurisdiction. The proportion was even higher – over 70 per cent – in the following regions: CIS, Africa, Latin America and, Baltic States and Eastern Europe.
- More than a fifth of respondents said they have or may have been approached to act as an agent or middleman in a transaction that could reasonably be suspected to involve international corruption. Nearly a third of respondents said a legal professional they know has been involved in international corruption offences.
- Nearly 30 per cent of respondents said they had lost business to corrupt law firms or individuals who have engaged in international bribery and corruption.
- Nearly 40 per cent of respondents had never heard of the major international instruments that make up the international anti-corruption regulatory framework, such as the OECD Anti-Bribery Convention and the UN Convention against Corruption.
- The level of awareness of the existence of anti-corruption extraterritorial legislation is higher than that of the international legal instruments: 60 per cent of survey respondents were aware of the FCPA and its scope, while 30 per cent were aware of the UK Bribery Act and its scope.
- A total of 42 per cent of respondents agreed that national anti-corruption laws and regulations were effective in preventing both inbound and outbound international corruption compared to five years ago.
- Younger respondents (aged 20 to 30 years) were, on average, less aware of international anti-corruption laws and national legislation than older respondents.
- Only 43 per cent of respondents recognised that their bar associations provide some kind of anti-corruption guidance for legal practitioners. Of these, only a third said that such guidance specifically addresses the issue of international corruption.
- Less than 40 per cent of respondents said anti-corruption was a priority at their law firm and just under a third said that their firms do not have a clear and specific anti-corruption policy.
- More than two-thirds of respondents said their law firms had not been subject to anti-corruption or anti-money laundering due diligence conducted by foreign clients.

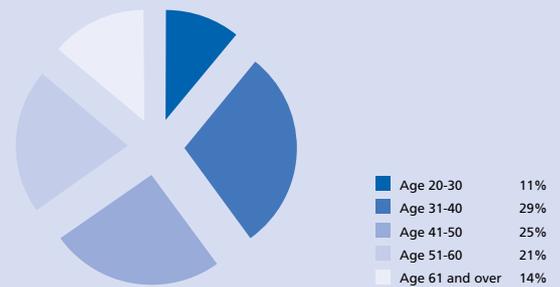
BOX 2 – DISTRIBUTION OF RESPONDENTS BY GEOGRAPHICAL REGION, AGE AND POSITION IN THEIR FIRMS



Percentage of respondents by positions in the law firm



Percentage of respondents by age



Number of responses	Jurisdictions
1-5	Albania, Algeria, Austria, Azerbaijan, Barbados, Belgium, Bolivia, Bosnia and Herzegovina, Bulgaria, Cambodia, Cayman Islands, Costa Rica, Croatia, Cyprus, Czech Republic, Egypt, El Salvador, Ethiopia, Finland, Georgia, Ghana, Guatemala, Honduras, Hungary, Iran, Ireland, Israel, Kenya, South Korea, Kosovo, Kyrgyz Republic, Latvia, Lebanon, Liechtenstein, Lithuania, Macedonia, Malaysia, Moldova, Nepal, Nicaragua, Oman, Pakistan, Panama, Paraguay, Poland, Qatar, Romania, Singapore, Slovakia, Slovenia, Sri Lanka, Syria, Taiwan, Tanzania, Thailand, Turkey, Uganda, Uruguay, Yemen, Zambia, Zimbabwe.
6-10	China, Colombia, Denmark, France, Italy, India, Japan, Mexico, Portugal, Russia, South Africa, United Arab Emirates, Venezuela.
11-20	Argentina, Australia, Brazil, Canada, Germany, Netherlands, Norway, Peru, Spain, Sweden, Switzerland.
21-30	Chile, New Zealand, Nigeria.
31 and above	Hong Kong, Ukraine, United Kingdom, United States.

B. Survey methodology

The survey was designed with the assistance of anti-corruption experts including officers and members of the IBA Anti-Corruption Committee and OECD and UNODC officials. It assessed legal professionals' views on a number of important issues, including:

- Perceptions of the risks of corruption in their own jurisdiction
- Awareness of the international and domestic instruments pertaining to transnational bribery and their implications for the legal profession
- Awareness of the extraterritorial application of some domestic anti-corruption legislation eg, US Foreign Corrupt Practices Act (FCPA) and UK Bribery Act (which is yet to come into force)
- Effectiveness of national laws and regulations to prevent corruption
- Level of understanding that legal professionals have about their role in the prevention of international corruption²
- Vulnerability of the legal profession to international bribery and corruption in their jurisdiction and in neighbouring jurisdictions
- Measures taken by local bar associations to tackle corruption

The survey represents a first attempt to shed light on the above issues, while care has to be taken when analysing the results, given that the sample of respondents is not statistically representative of the countries covered by the survey. In total, 642 professionals from 95 jurisdictions participated,³ a list of the countries in each geographical region used in this report is given in Annex I. Survey respondents were invited to answer questions online between 15 June and 5 July 2010. The respondents represented members of the legal profession working in private practice in the following areas: practice groups; corporate law; criminal law; dispute resolution; energy, environment, natural resources and infrastructure law; financial services; intellectual property, communication and technology; international sales, franchising and product law; maritime and aviation; public law; real estate; and taxation. The complete questionnaire can be viewed online at <http://tinyurl.com/ACStrategy>.

C. About the authors

The survey and this report were prepared by the IBA, with input from the OECD and the UNODC. The findings, interpretations and conclusions expressed do not necessarily represent the views of the IBA, the OECD, the UNODC, or their member countries, including the States Party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the UN Convention against Corruption (UNCAC). The IBA, OECD and UNODC do not guarantee the accuracy of the data included in this publication and accept no responsibility for any consequences of their use. The term 'country' or 'jurisdiction' does not imply any judgment by the OECD or the UN as to the legal or other status of any territorial entity.

Notes

- 1 In this report, the international anti-corruption regulatory framework is used to refer to the following body of international law relating to anti-corruption: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), the United Nations Convention against Corruption (UNCAC), the Inter-American Convention against Corruption (IACAC), the African Union Convention on Preventing and Combating Corruption, the Council of Europe Criminal Law Convention on Corruption and the Council of Europe Civil Law Convention on Corruption, and Article 29 of the Treaty on European Union.
- 2 A common international corruption scenario which has an impact on the legal community involves a company approaching a law firm or lawyer to act as agent or middleman in a corrupt transaction that crosses borders in some manner and which directly or indirectly involves government officials. This corruption may take the form of bribery, facilitation payments, fraud, money laundering, among other potentially criminal conduct.
- 3 Of the 642 private practitioners who started the survey, only 574 of these completed it in full. In the analysis that follows, we use the maximum number of responses available for each question.

Survey results

In the globalised economy of the early 21st century, an uncountable number of international business transactions take place every day. Each poses an array of new opportunities for lawyers, but also challenges. Lawyers' involvement in these transactions exposes them to the risks and threats of international corruption. Unfortunately, however, lawyers often remain unaware of these risks and threats. In recognition of this lack of awareness, this survey was organised to address the following four subjects:

- The legal profession's perception of the impact of corruption on their profession at home and abroad (Section A of the report)
- Perceptions of the risks associated with international corruption for the legal profession (Section B)
- Levels of awareness of the international anti-corruption regulatory framework that exists to address these risks (Section C)

- The role which local bar associations, law societies and law firms play in addressing the challenge of corruption in the legal profession (Section D)

A. Perceptions of the impact of corruption on the legal profession at home and abroad

1. Perceptions of the impact of corruption on the legal profession at home

Survey respondents were asked whether corruption is an issue in the legal profession in their own jurisdiction. Chart 1 represents the affirmative responses received, which are grouped by world regions.

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

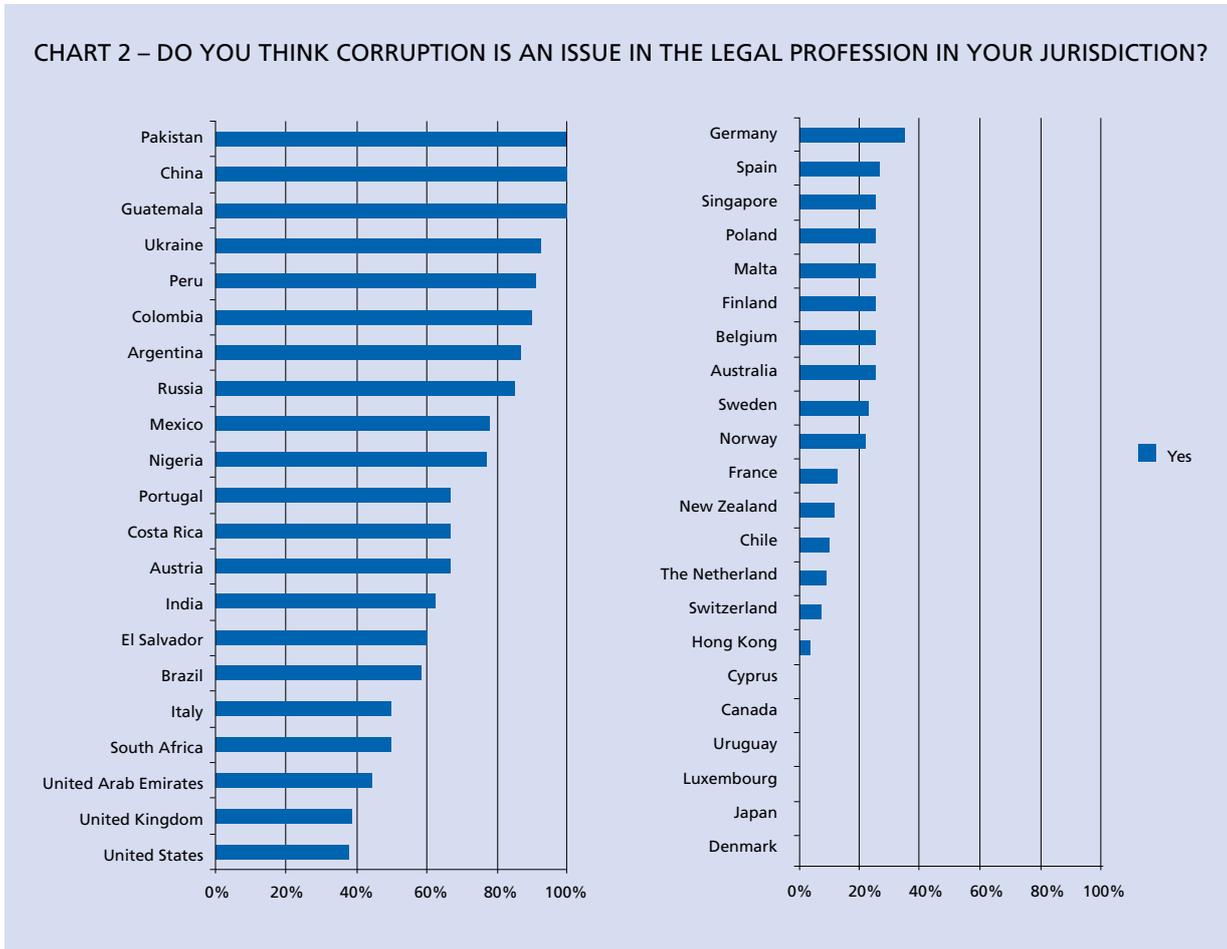


Note: Respondents could answer 'yes' or 'no'.

Nearly half of all respondents recognised corruption to be an issue affecting the legal profession in their own jurisdiction. However, responses varied significantly from region to region. For example, only 16 per cent of respondents from Australasia saw corruption as an issue, versus nearly 90 per

cent of respondents from the CIS (Commonwealth of Independent States) region, which includes Ukraine, Azerbaijan, Kyrgyz Republic, Moldova, and Russia.

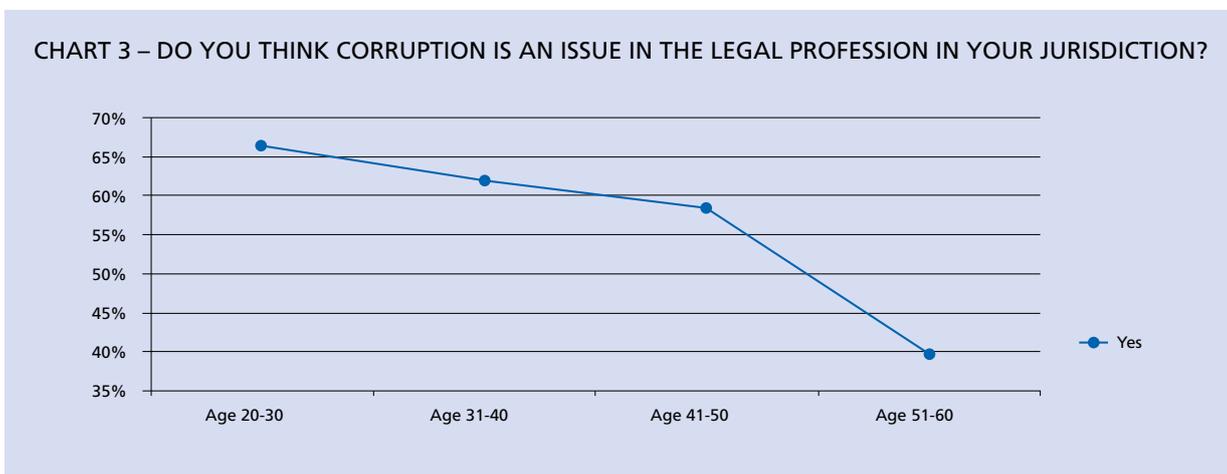
Chart 2 shows the results in selected jurisdictions:



Note: Respondents could answer 'yes' or 'no'. Countries with three or fewer respondents have been excluded from the chart.

Chart 3 shows the perception of corruption in the legal profession of the respondent's jurisdiction by age group. According to survey results, the older

the respondent, the less likely they were to agree that corruption is an issue in the legal profession in their jurisdiction.

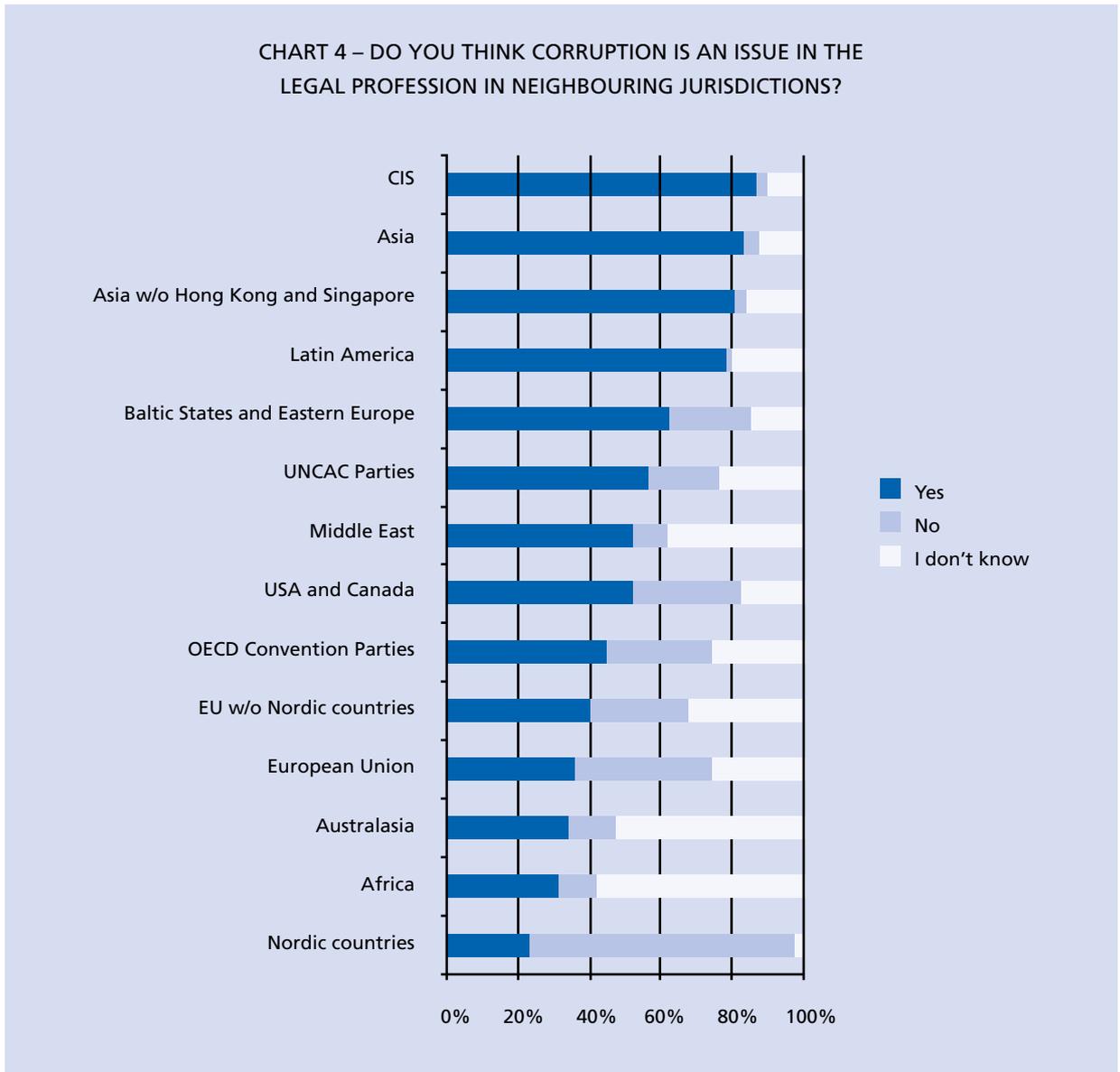


Note: Respondents could answer 'yes' or 'no'.

2. Perceptions of the impact of corruption on the legal profession in neighbouring jurisdictions

Due to the growth in international transactions, clients increasingly rely on local counsel for advice on foreign legislation and for representation in

international business transactions. As a result, legal professionals may be exposed to instances of corruption outside their own jurisdiction. The survey therefore asked participants whether corruption was an issue in the legal profession in neighbouring jurisdictions. Responses to this question are shown in Chart 4.



In all, 56 per cent of survey respondents stated that corruption was a problem in a neighbouring jurisdiction. On a regional level, however, responses varied significantly. Nearly 90 per cent of respondents from the CIS region, for example, said corruption was a problem in neighbouring jurisdictions, compared to roughly 25 per cent in Nordic countries. The majority of respondents in Australasia, Africa and Asia responded 'I do not know'.

Conclusion

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

B. Risks associated with international bribery and corruption

1. Perceived impact of corruption on foreign investment

If a jurisdiction is associated with bribery and corruption, it runs the risk of discouraging important foreign investment. Given the role legal professionals often play in international business transactions – acting in many occasions as intermediaries, agents or representatives of

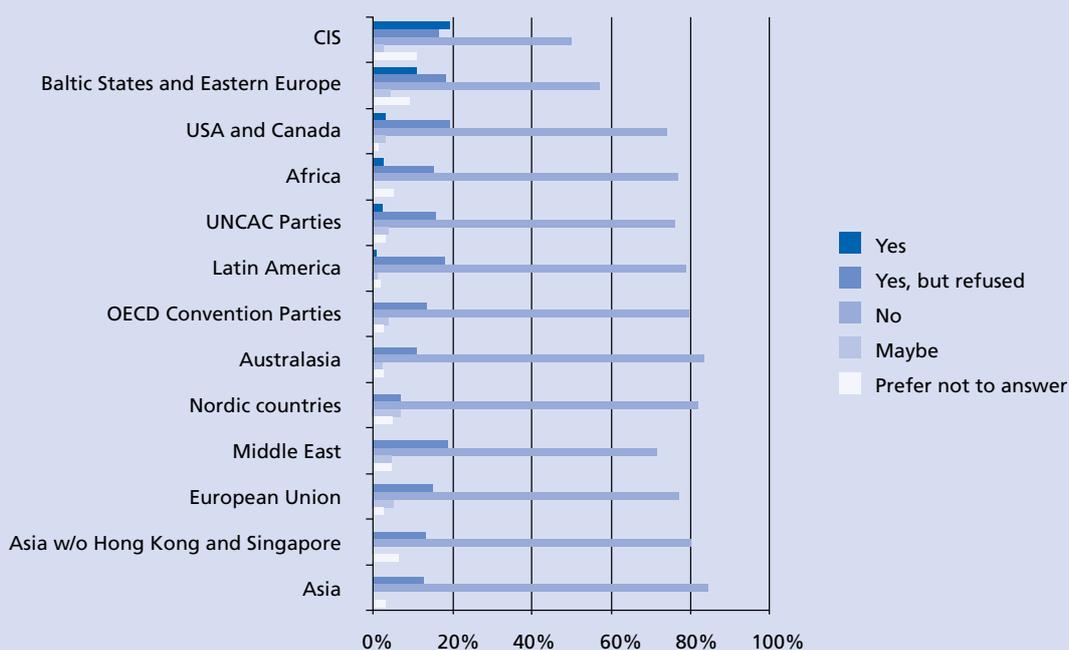
foreign investors – they have a special insight into the perceived impact of corruption on foreign investment. The survey therefore asked participants whether refusing to pay bribes might reduce the chances of foreign companies or investors of conducting business in their country.

In response to the above question, emerging economies such as 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) responded 'certainly', 'very likely' or 'likely'. Respondents from more advanced economies tended to respond 'unlikely' or 'definitely not' to the question. This was the case in 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

Lawyers may sometimes be faced with a situation where their clients instruct them to act in a transaction that could involve possible corruption. Respondents were asked whether they had been approached to act in a transaction that could reasonably be suspected to involve international corruption. Chart 5 below illustrates the results by world regions

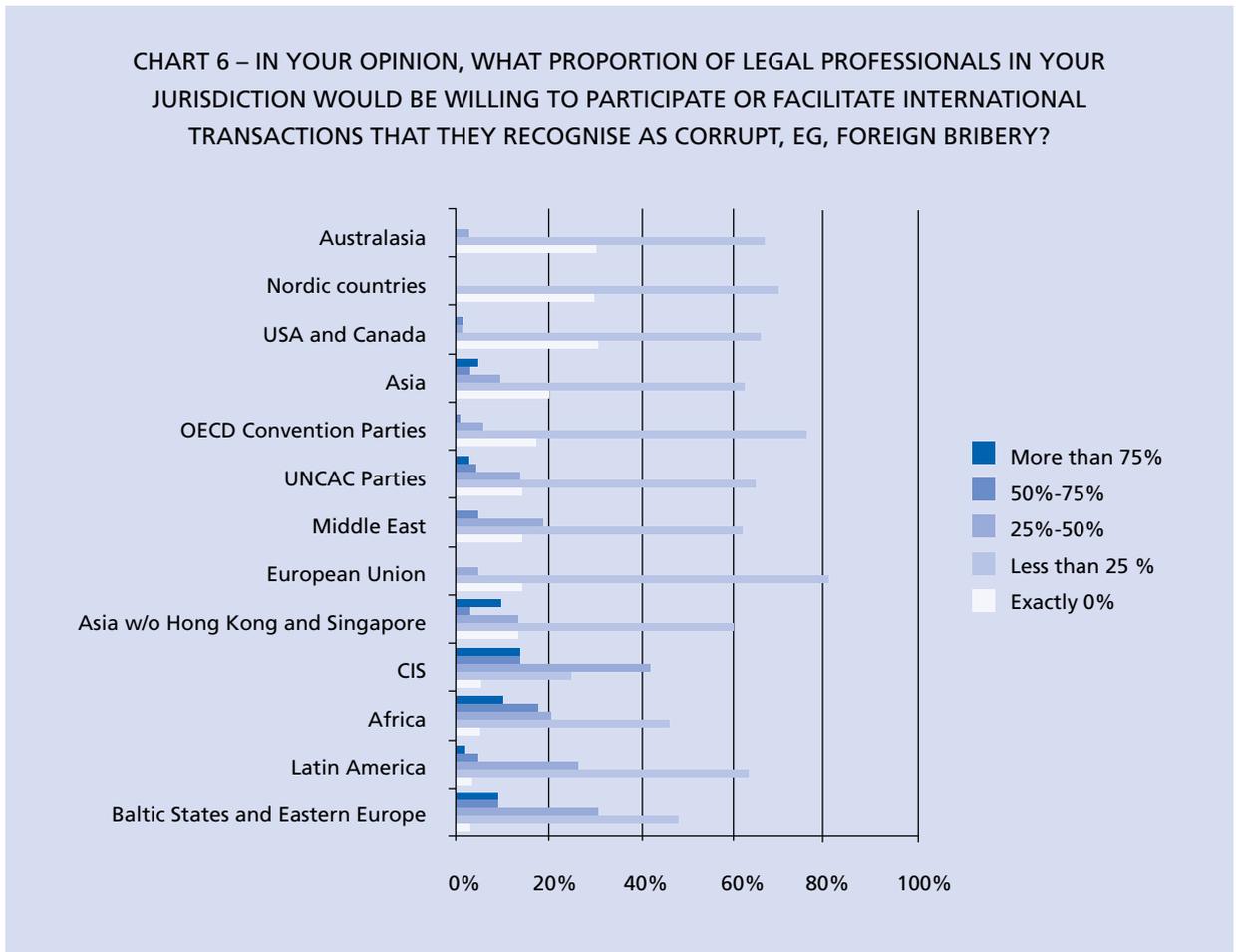
CHART 5 – HAVE YOU EVER BEEN APPROACHED TO ACT AS AN AGENT OR MIDDLEMAN IN A TRANSACTION THAT COULD REASONABLY BE SUSPECTED TO INVOLVE INTERNATIONAL CORRUPTION, EG, FOREIGN BRIBERY?



In general, most survey respondents said they had never been approached to act as an agent or middleman in a transaction that could reasonably be suspected to involve international corruption, such as foreign bribery. However, it is interesting to note that one in five respondents answered 'yes', 'yes but refused' and 'maybe' to this question. This response alerts us to the unfortunate fact that lawyers are indeed approached to act as agents/

middlemen in transactions that could reasonably be suspected to involve international corruption.

The survey also gathered the opinion of participants as to what proportion of legal professionals in their jurisdiction would be willing to participate or facilitate international transactions that they recognise as corrupt. The responses by geographic region are set out in Chart 6.

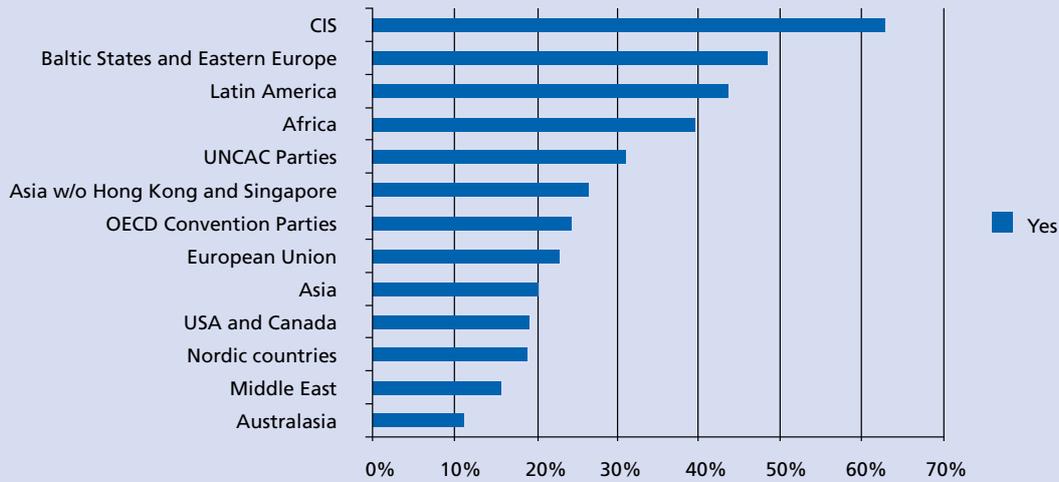


Approximately 28 per cent of respondents from Africa and CIS countries believed that more than half of lawyers in their jurisdiction would knowingly engage in transactions that could be corrupt. In contrast, less than 1.5 per cent of respondents in more developed regions, such as Australasia, the EU and the USA and Canada, felt that more than

half of lawyers in their jurisdiction would engage in such behaviour.

Respondents were also asked whether they knew of any legal professionals in their home jurisdiction who have been involved in international corruption. Chart 7 shows the results by geographical region for those who answered in the affirmative.

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



Note: Respondents could answer 'yes' or 'no'.

In Chart 7, the percentage of respondents, again, from developing or emerging economies were more likely to note they knew of other legal professionals who have engaged in corrupt activities than those from developed economies. For instance, less than 20 per cent of respondents from Australia, Canada, Denmark, Finland, Germany, the Netherlands and New Zealand were aware of any lawyer in their jurisdiction who had been involved in international corruption. In contrast, 50 per cent of respondents from South Korea, 53.3 per cent from Argentina, 57.1 per cent from Russia, 66.6 per cent from Kenya and 81.8 per cent from Peru, answered in

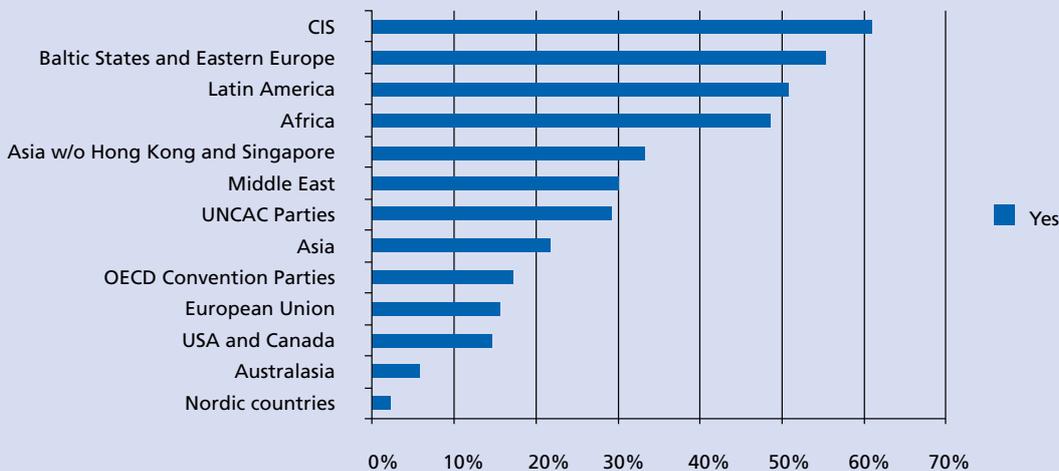
the affirmative to the question. The overall results show that nearly a third of all respondents knew of other legal professionals who have been involved in international corruption offences.

So, how do these corrupt acts potentially affect one's ability to compete in the legal profession?

Survey respondents were asked whether they believed they had lost business to other law firms or individual lawyers who were prepared to make illicit payments to government officials on behalf or for the benefit of foreign companies/investors. Chart 8 shows the results by geographical region.

Responses to this question help illustrate the

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?



Note: Respondents could answer 'yes' or 'no'.

BOX 3 – INTERNATIONAL ANTI-CORRUPTION INSTRUMENTS

UNCAC

The United Nations Convention against Corruption (UNCAC) is the most comprehensive, and only global legal framework against corruption. It obliges state parties to implement a wide range of anti-corruption measures including measures aimed at preventing and criminalising corruption related activities. Article 16 specifically deals with bribery of foreign public officials. Today there are 140 signatories and 146 countries are party to the convention. In November 2009, the terms of reference of the Mechanism for the Review of Implementation of the UNCAC were adopted.

OECD Convention

The OECD Anti-Bribery Convention (officially OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. The convention was signed on 17 December 1997 and came into force on 15 February 1999. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction. As of today, the 32 OECD member countries and six non-member countries have adopted this Convention. Countries that have signed the Convention are required to put in place legislation that criminalises the act of bribing a foreign public official. The Convention provides for a thorough monitoring mechanism comprising three phases. Phase 1 evaluates the adequacy of a country's legislation to implement the Convention, while Phase 2 assesses whether a country is applying this legislation effectively. Phase 3 focuses on enforcement of the Convention. The newly adopted 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions and its Annexes strengthen the legal framework of the Convention with new provisions for combating facilitation payments, protecting whistleblowers and improving communication between public officials and law enforcement authorities.

Inter-American Convention

The Inter-American Convention Against Corruption (IACAC) was adopted by the member countries of the Organization of American States on 29 March 1996 and came into force on 6 March 1997. It aims, inter alia, to promote and strengthen the development by each of the parties of the mechanisms needed to prevent, detect, punish and eradicate corruption and to promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of anti-corruption measures and actions. The Convention's oversight mechanisms provide for a comprehensive system of inter-state monitoring and compliance assessments. A follow-up mechanism was adopted in June 2001 under the Spanish Acronym MESICIC. At present 32 countries in the Americas are parties to this Convention.

African Union Convention

The African Union Convention on Preventing and Combating Corruption was adopted on 11 July 2003. It represents regional consensus on what African states should do in the areas of prevention, criminalisation, international cooperation and asset recovery. The Convention covers a wide range of offences including bribery (domestic or foreign). So far 33 African countries have ratified the Convention. A follow-up mechanism is provided for in Article 22.

Council of Europe Conventions on Corruption

There are two conventions in this regard. The Council of Europe Criminal Law Convention on Corruption adopted on 4 November 1998 and the corresponding Civil Law Convention adopted exactly one year later. These were the first attempts to define common international rules in the field of civil and criminal law on corruption in Europe. While the Civil Law Convention, in particular, provides for compensation to be paid for damages resulting from acts of corruption, the Criminal Law Convention criminalises corrupt conduct and promotes international cooperation with respect to corruption. Both the Conventions have been signed by 47 COE states and six non-member states. The implementation of both conventions is monitored by GRECO: the Group of States Against Corruption.

European Union Instruments on Corruption

The EU has established its anti-corruption policy in Article 29 of the Treaty on European Union. The two main instruments are the Convention on the Protection of the European Communities' Financial Interests and the Convention against Corruption Involving European Officials or Officials of Member States of the European Union.

impact of corruption on competition in the legal services market. In all, almost 30 per cent of all respondents answered in the affirmative. However, at the regional level, some familiar patterns were observed. For instance, in more developed economies, such as in the Nordic region, less than five per cent of respondents believed that they had lost business to other law firms/individuals because of corruption. Similarly, four per cent of respondents in New Zealand, 5.3 per cent in Canada and Chile,

ten per cent in Australia, and 17 per cent in the UK and Spain answered 'yes' to the question as well.

Conversely, over 70 per cent of Ukrainian and Peruvian respondents, 55 per cent of Argentinean, Brazilian, Colombian, Indian and Venezuelan respondents and 34 per cent of Russian respondents thought that they had lost business to other law firms or individuals who were prepared to assist foreign clients to make illicit payments to government officials in their own jurisdiction.

Conclusion

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.

C. Level of awareness of the international anti-corruption regulatory framework

1. Awareness of international anti-corruption instruments

International corruption remains a major threat to the integrity and health of the legal profession in several parts of the world. One of the biggest obstacles to confronting this issue is the low level of awareness of the international anti-corruption regulatory framework that exists to address these risks. This framework includes international anti-corruption instruments and associated national legislation with extraterritorial application.

Given this situation, respondents were questioned on their awareness of the various international instruments on anti-corruption. The survey listed the instruments described in Box 2 and participants were asked to select the ones

with which they were familiar with. A last available choice was 'none of the above'. Chart 9 represents the choices made by participants by region.

Nearly 40 per cent of respondents answered 'none of the above' when asked if they were aware of any of the international instruments included in the survey. Respondents recognised some of the instruments, particularly the OECD (38.5 per cent) and UN (35.7 per cent) conventions, although in a very modest proportion. The overall and regional results show that the majority of respondents selected 'none of the above', even in developed economies. More than 40 per cent of respondents in developed countries such as Denmark, Germany, Canada, and Japan were not familiar with any instrument, a result that increased to more than 70 per cent for participants in New Zealand and Hong Kong.

These results demonstrate the lack of awareness among legal professionals of the main international anti-corruption instruments and, consequently, of the provisions in these instruments that concern the liability of intermediaries in international business transactions, which could affect legal professionals.

To further illustrate the real lack of awareness of these instruments, the survey team cross-tabulated countries by the Conventions they are party to. The outcome is equally alarming in terms of lack of awareness: more than half of all respondents were unaware of these instruments despite their jurisdiction being a party.

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

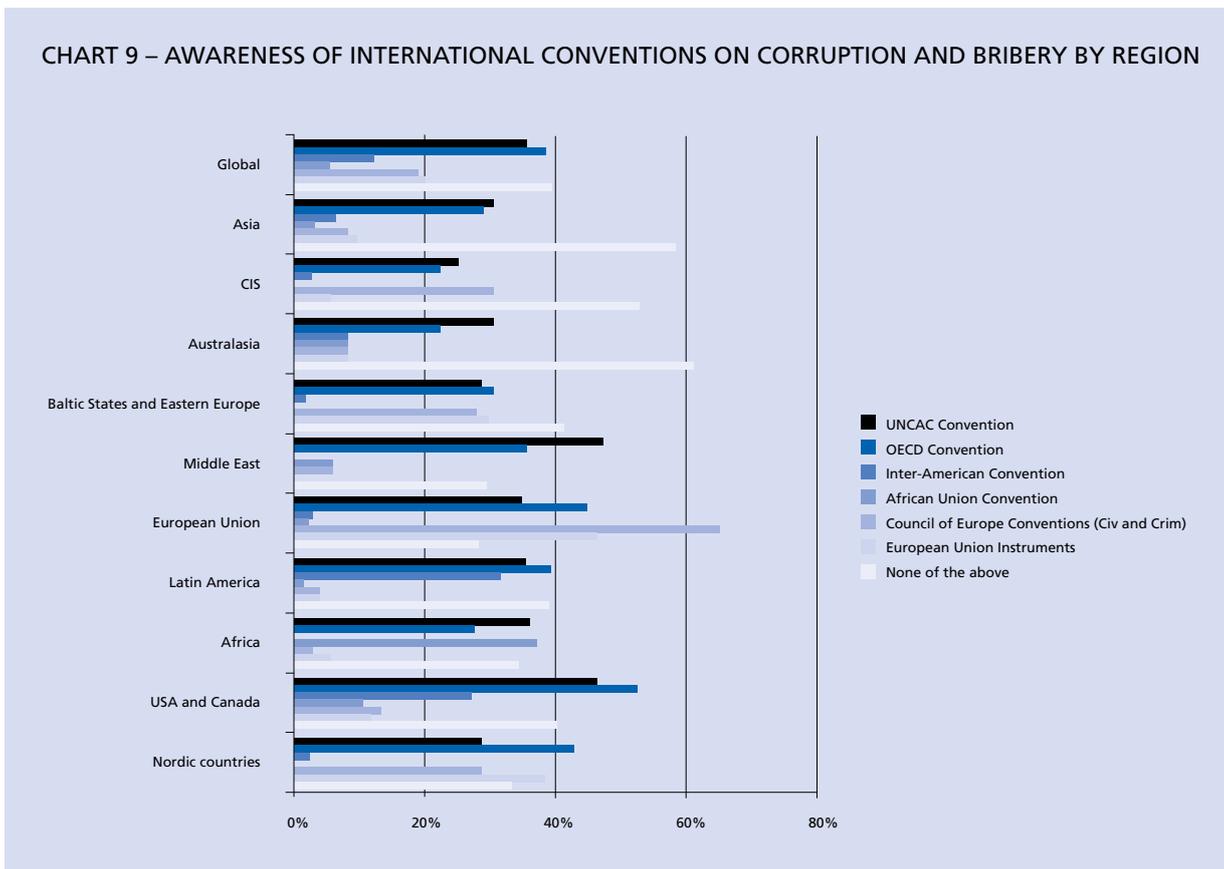
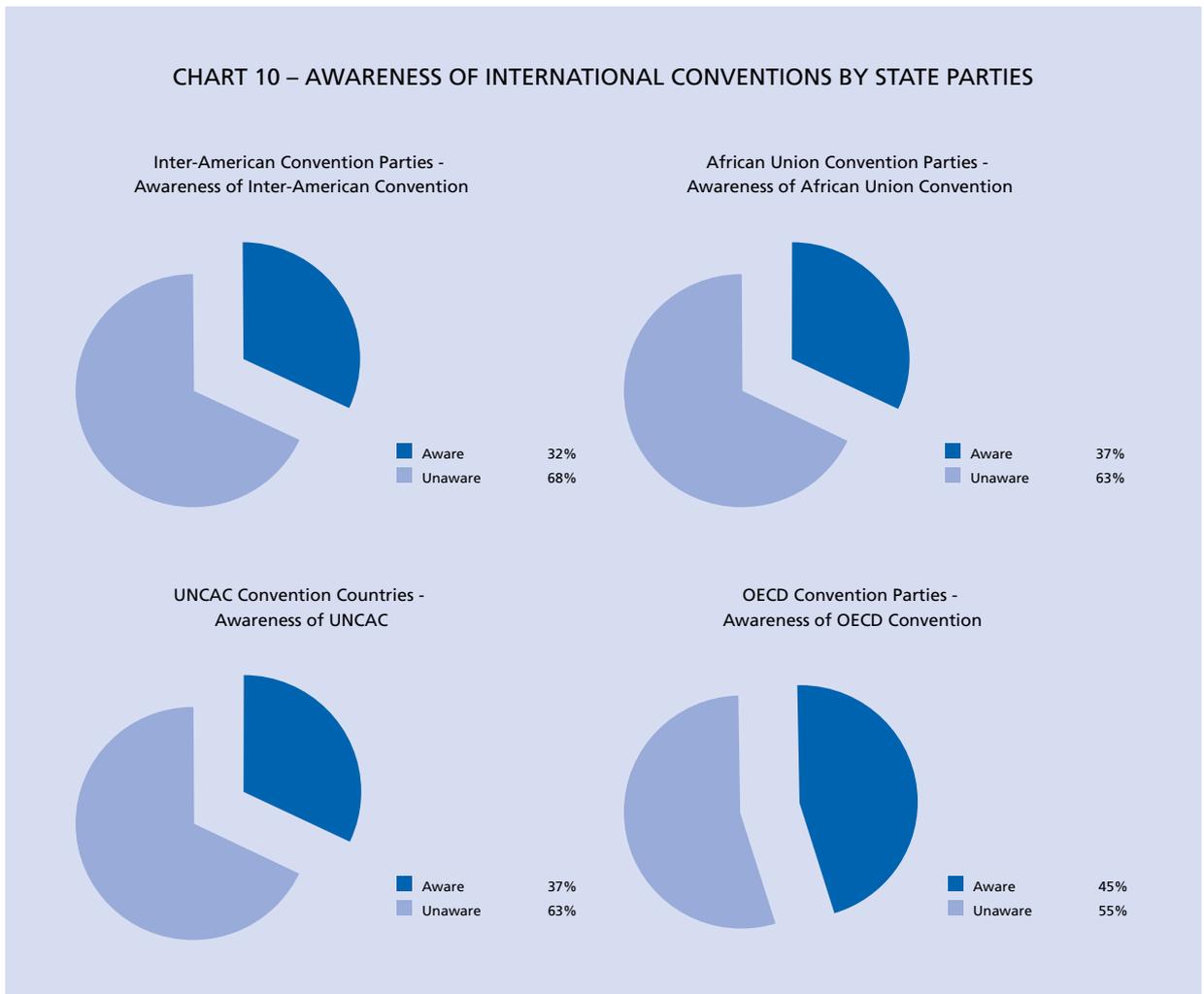


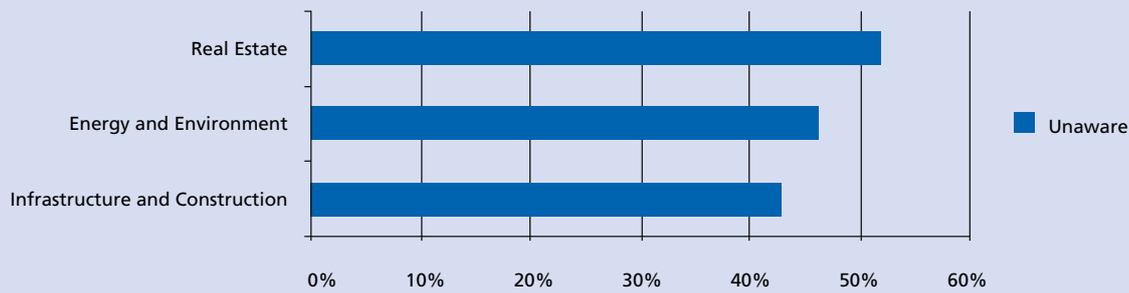
CHART 10 – AWARENESS OF INTERNATIONAL CONVENTIONS BY STATE PARTIES



The survey team also cross-tabulated survey results by the practice area of respondents, with a special focus on the energy and environmental, infrastructure and construction, and real estate. These sectors have been identified as particularly prone to the risks of international bribery and corruption, according to Transparency

International's Bribe Payers' Index, which ranks 22 leading international and regional exporting countries by the tendency of their firms to bribe abroad. Chart 11 shows the percentage of respondents in these sectors who said they had no knowledge of any of these international anti-corruption instruments.

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



2. Awareness of national legislation with extraterritorial application

The extraterritorial application of national legislation dealing with international corruption is an important element of the global anti-corruption regulatory framework that concerns lawyers involved in international transactions. Some domestic laws extend their anti-corruption jurisdiction beyond national boundaries. This gives rise to extraterritorial or long arm jurisdiction, the ramifications of which have been wide-ranging and included legal practitioners (see Box 4).

Survey respondents were asked about their awareness of two sample pieces of national legislation: the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, both of which have extraterritorial applicability. This means that lawyers involved in international transactions that include the bribery of foreign public officials can be affected by these laws. In all, 40 per cent of survey respondents were unaware of the FCPA and its scope, while over 70 per cent of respondents were unaware of the UK Bribery Act and its scope.

BOX 4 – EXTRATERRITORIAL APPLICATION OF THE OFFENCE OF BRIBING A FOREIGN PUBLIC OFFICIAL

Article 4 of the OECD Anti-Bribery Convention requires States Parties to exercise jurisdiction over cases of bribing a foreign public official that take place in whole or in part in their territories. In addition, States Parties that have jurisdiction over offences committed abroad by their nationals must have such jurisdiction for the bribery of foreign public officials when committed abroad by their nationals, in accordance with the same principles. These forms of jurisdiction are known as territorial and nationality jurisdiction respectively.

Pursuant to Article 4, all 38 States Parties to the OECD Anti-Bribery Convention have territorial jurisdiction over the offence of bribery of foreign public officials, and all except one State Party have full or partial jurisdiction over their nationals who bribe foreign public officials abroad. Many States Parties can attribute nationality to companies for this purpose, and depending on the law of a State Party, a company may be considered a national if it is incorporated, listed on a stock exchange or has its seat of operations in that Party. It is therefore important that all parties to an international business transaction are aware of the scope of these offences, and can advise their clients accordingly.

As of December 2009 there have been 138 convictions of natural persons and 49 convictions of legal persons in 13 States Parties to the Anti-Bribery Convention. The increased momentum in anti-bribery enforcement actions against individuals and companies means there will be increasing instances of the extraterritorial application of anti-bribery laws to natural and legal persons engaging in international business transactions.

Respondents were also asked whether they believed that national anti-corruption laws and regulations were effective in preventing both inbound and outbound corruption compared to five years ago. A total of 42 per cent of respondents believed that such laws and regulations were ineffective in preventing inbound and outbound international corruption. At a more disaggregated level, all of the respondents from Venezuela, 92.9 per cent from Argentina, 85.7 per cent from Russia and India, 76.3 per cent from Nigeria, 71.4 per cent from China, 70 per cent from Colombia and 60 per cent from South Africa were of the opinion that domestic laws were ineffective in preventing both flows of corruption.

It is also of noteworthy that, in countries where major foreign bribery cases have been prosecuted, the majority of respondents found the domestic legislative framework to be effective. In Germany, for example, where companies such as Siemens, Daimler, Deutsche Bahn and MAN have been the subject of much-publicised foreign bribery cases,

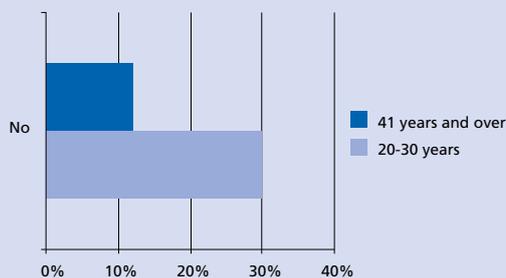
89.5 per cent of respondents opined that laws and regulations were effective in preventing outbound corruption and 78.9 per cent had the same perception regarding inbound corruption. No respondent in Germany had the opinion that laws have not been effective during the last five years.

Similarly, all respondents from the US, which has actively enforced the FCPA and has the greatest number of prosecutions for bribery of foreign public officials in international business transactions, were aware of the FCPA. All respondents also confirmed their knowledge of the extraterritorial application of this legislation.

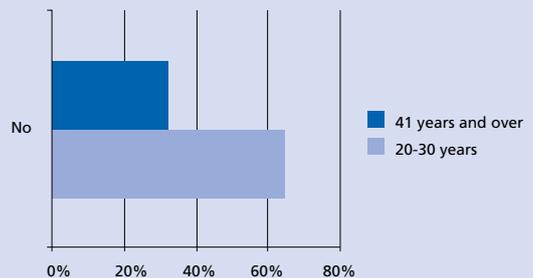
Finally, awareness of rules and laws against international corruption not only varied according to geographical location but also according to the age of the respondent. Survey results showed that younger respondents (aged 20-30) showed less awareness of international anti-corruption laws and national legislation than more senior respondents (see Box 5).

BOX 5 – AWARENESS AND AGE

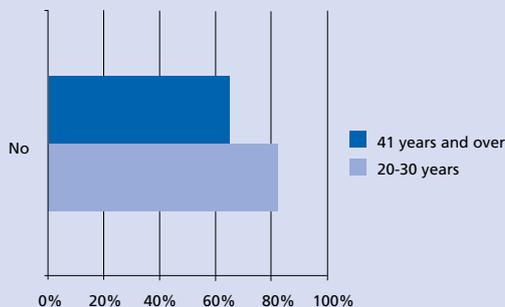
Are you aware of your national laws and regulations on international corruption, eg, foreign bribery?



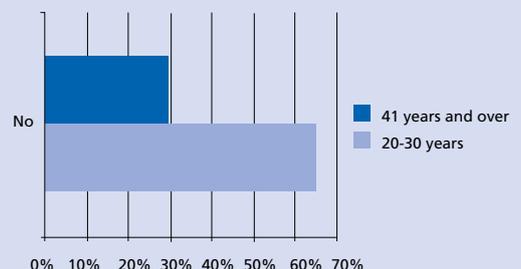
Are you aware of the existence and scope of the United States Foreign Corrupt Practices Act?



Are you aware of the existence and scope of the United Kingdom Bribery Act?



Are you aware of the long arm jurisdiction, ie, the cross border reach, of overseas laws such as the United States FCPA or UK Bribery Act?



Conclusion

There is a dangerous 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.

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

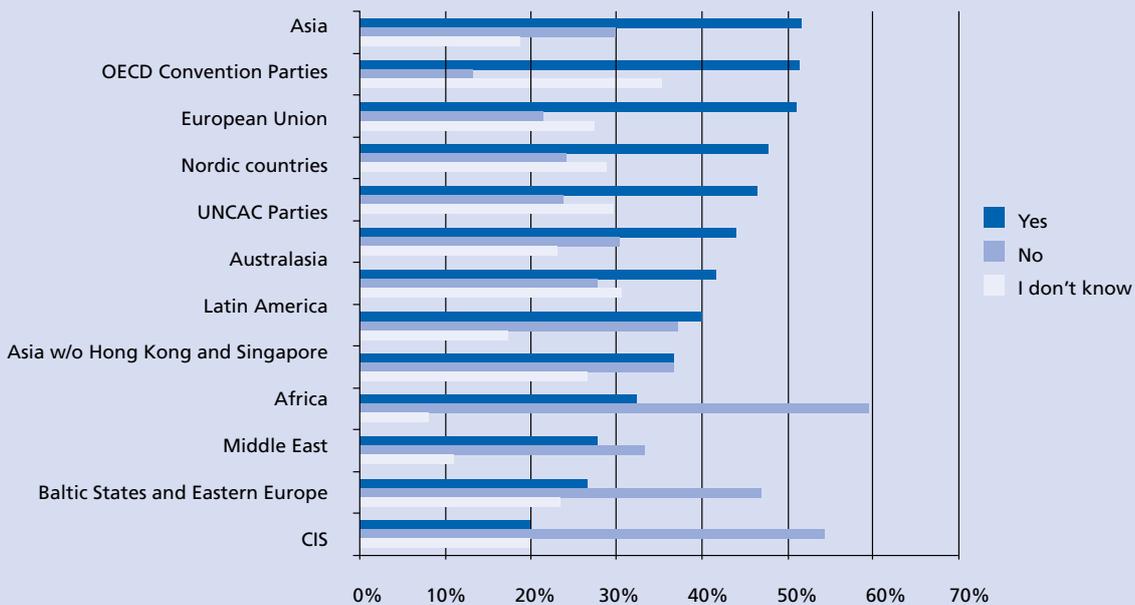
The lack of awareness of the international anti-corruption regulatory framework is a global challenge. Local bar associations, law societies

and law firms are integral to facing this problem. The survey asked respondents whether they feel these organisations are playing a positive role in addressing the challenges of corruption.

1. Bar associations and law societies

To ascertain the work carried out by national bar associations in the area of anti-corruption, respondents were asked whether their local bar associations provide specific anti-corruption guidance for legal practitioners. In all, approximately 43 per cent answered 'yes' to this question. A regional breakdown of responses to this question is given in Chart 12.

CHART 12 – DOES YOUR BAR ASSOCIATION OR LAW SOCIETY PROVIDE SPECIFIC ANTI-CORRUPTION GUIDELINES FOR LEGAL PROFESSIONALS?



Note: Respondents could answer 'yes', 'no', 'I do not know', or 'there is no bar association in my jurisdiction'.

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

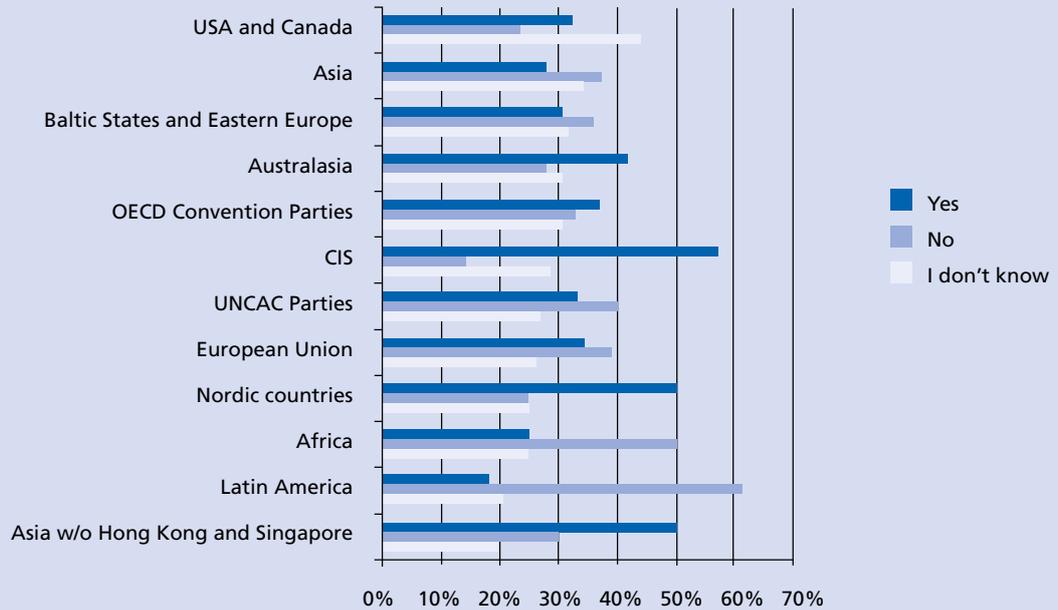
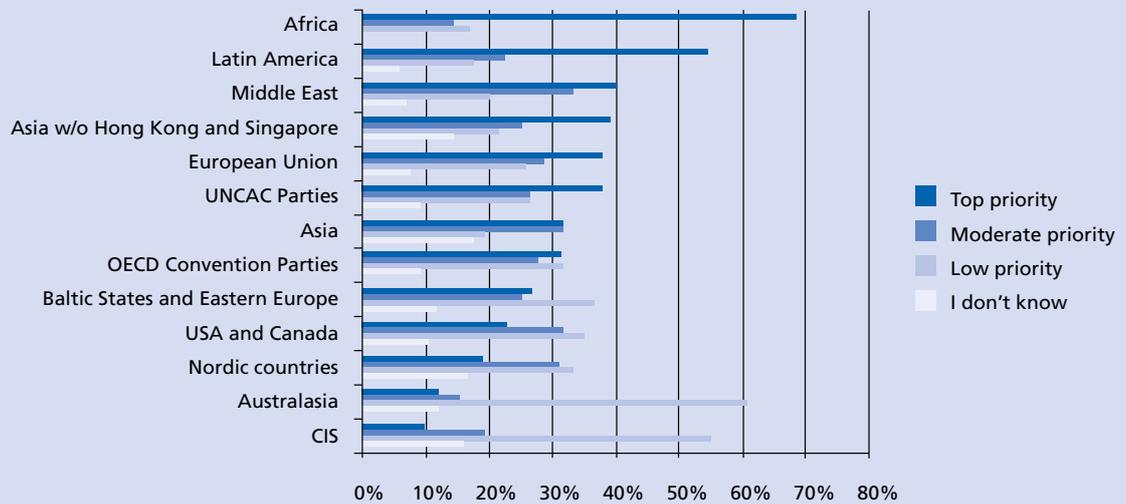


CHART 14 – WHERE DOES DEALING WITH CORRUPTION AND FOREIGN BRIBERY RISKS RANK WITHIN THE PRIORITIES OF YOUR LAW FIRM?



Those who recognised the existence of anti-corruption guidance of their respective bar association were further asked whether such guidance tackles international corruption. Chart 13 shows the results, by region.

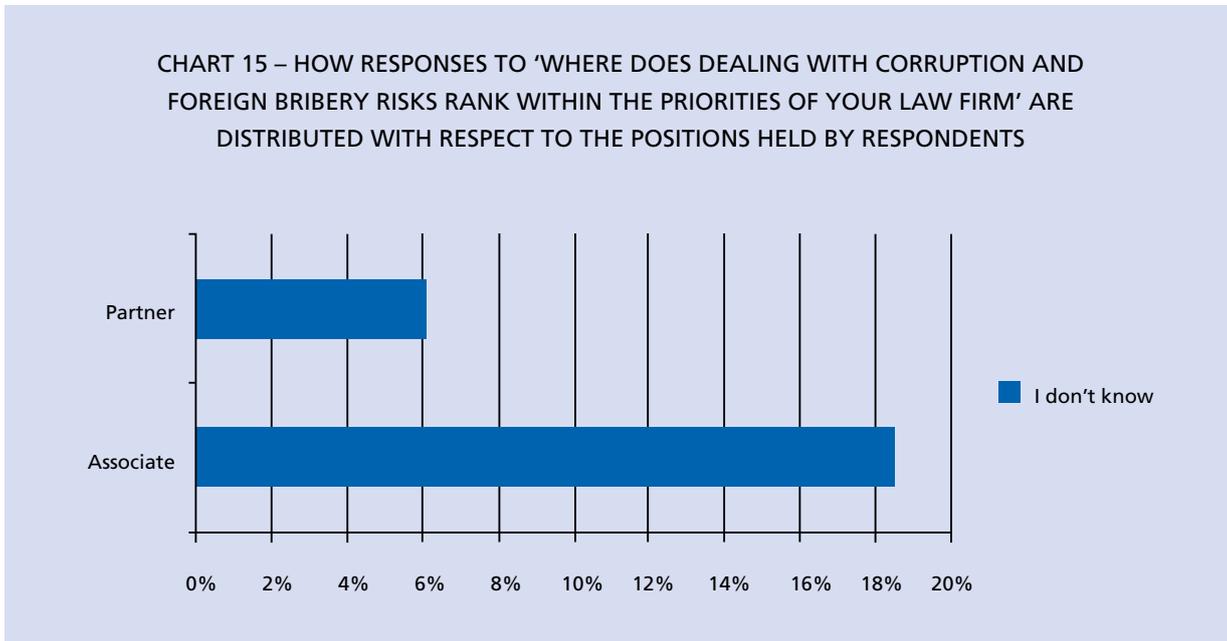
The results show a low level of awareness of the existence of specific bar guidance on combating international corruption.

2. Law firms

The survey also asked respondents to consider whether their law firms are doing enough to prepare their organisations and employees for the increasingly regulated and complicated world of anti-corruption. Participants were questioned as to how local law firms prioritise the issue of international corruption. Chart 14 compares the results by geographical region.

Chart 15 shows that of those who selected 'I do not know' as the answer to this question, many more associates than partners were unaware of a firm-wide anti-corruption policy. Given the anonymity of the responses to the survey, we could not compare

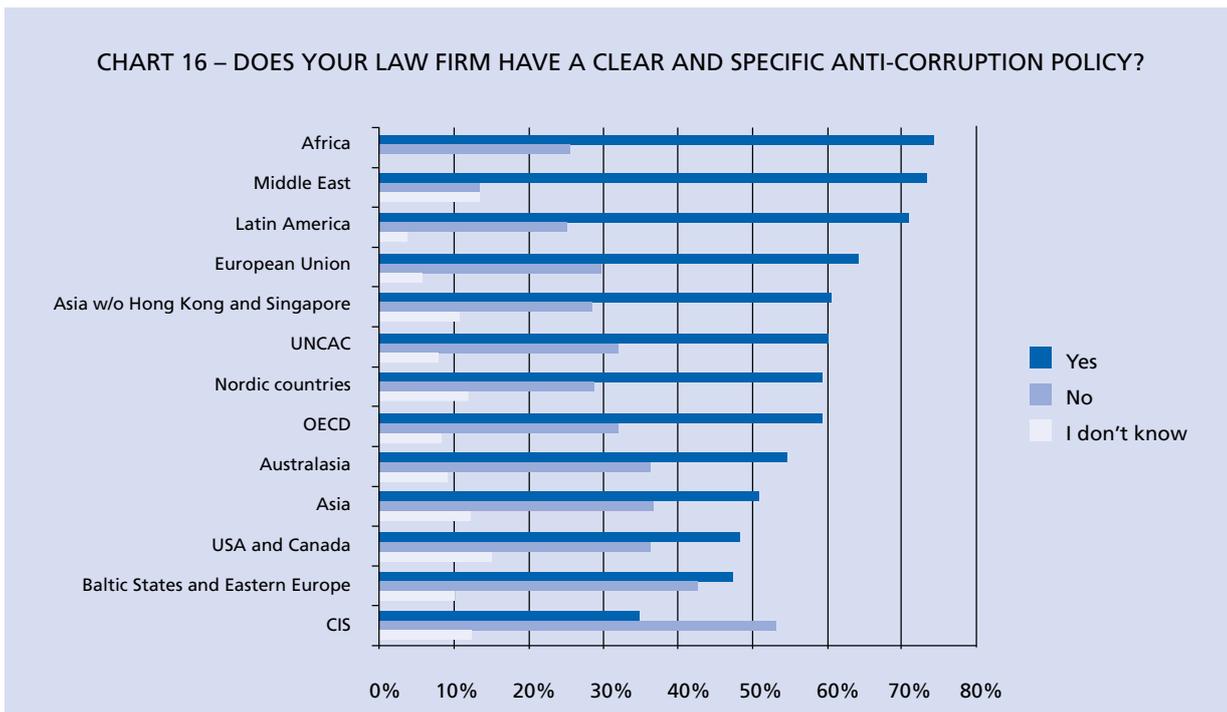
responses from members within the same law firm. However, the results alert us about the possibility of a fracture in the vertical communication between the different levels of seniority in law firms regarding the organisation's compliance priorities.



Note: Respondents could answer 'yes', 'no' or 'I do not know'.

In a similar question, respondents were asked whether their firms have a clear and specific anti-corruption policy. Nearly 32 per cent of all

respondents said 'no'. See Chart 16 for the regional distribution of responses.

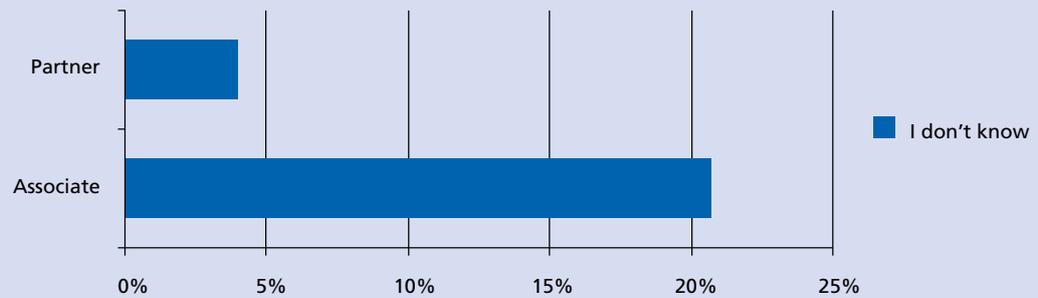


Note: Respondents could answer 'yes', 'no' or 'I do not know'.

When those who selected 'I do not know' were cross-tabulated with their positions in the firm, a familiar pattern again arose, as shown in Chart

17. Partners showed a more than five times higher level of awareness than associates, indicating that these efforts may not be disseminated to the firm's lower ranks.

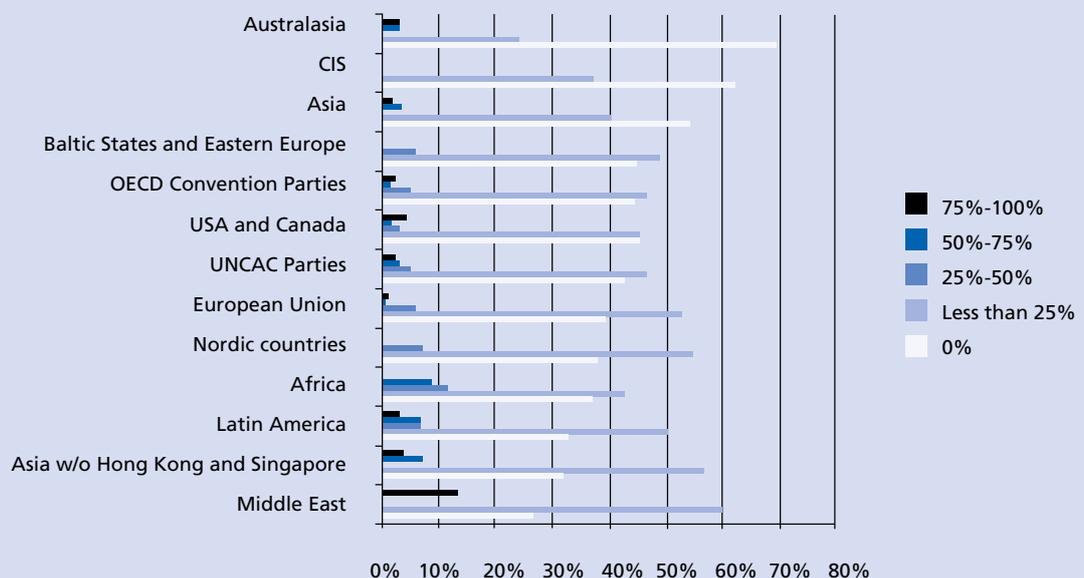
CHART 17 – HOW RESPONSES TO 'DOES YOUR LAW FIRM HAVE A CLEAR AND SPECIFIC ANTI-CORRUPTION POLICY?' ARE DISTRIBUTED WITH RESPECT TO THE POSITIONS HELD BY RESPONDENTS IN LAW FIRMS



On a positive note, those who indicated that their law firms have a clear and specific anti-corruption policy were then asked how their firms implement this policy. More than 70 per cent of these respondents selected codes of ethics, 63.8 per cent staff training, 22.7 per cent corporate social responsibility statements and 20.6 per cent stated that their firms have a designated anti-corruption compliance officer.

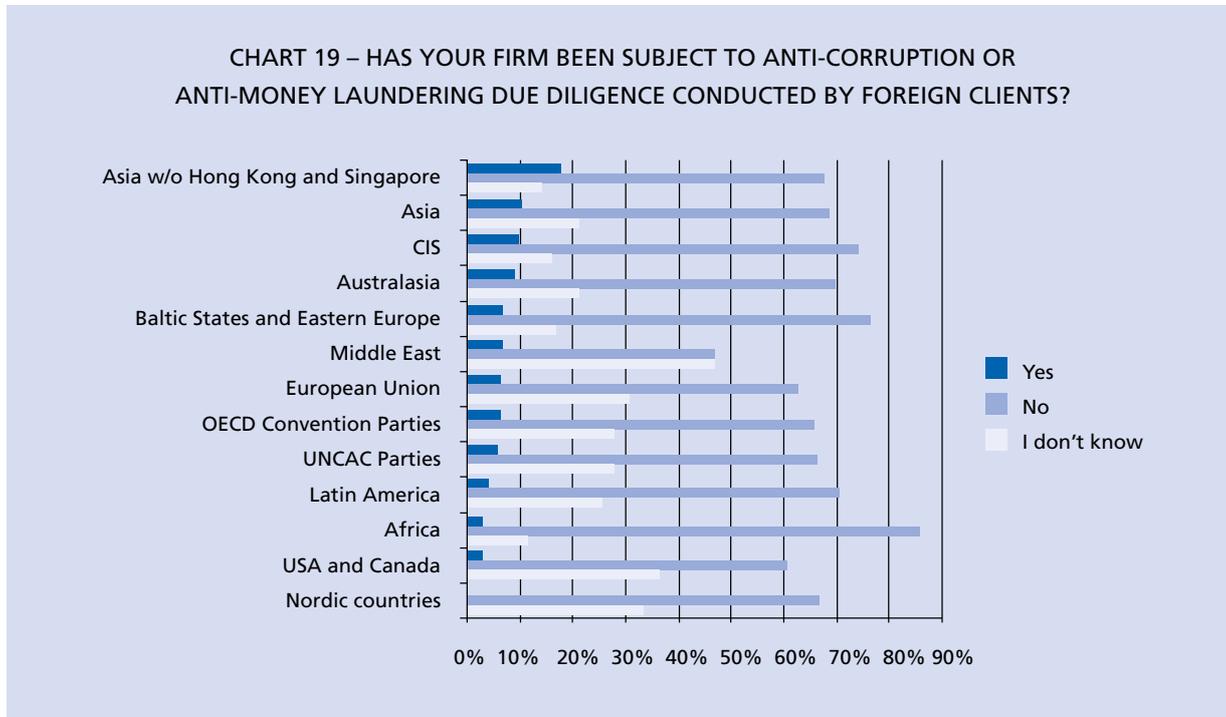
Following on from the discussion above related to client pressure to engage in corrupt behaviour, the survey also asked respondents what proportion of their clients require their firm to certify anti-corruption compliance. In all regions, more than 90 per cent of respondents stated that less than 25 per cent of clients required them to certify their anti-corruption compliance. Chart 18 shows the results by region:

CHART 18 – APPROXIMATELY WHAT PROPORTION OF YOUR FOREIGN CLIENTS REQUIRE YOUR FIRM TO CERTIFY ANTI-CORRUPTION COMPLIANCE, EG, FCPA COMPLIANCE?



This seems to confirm that clients are unaware of their own due diligence responsibilities and/or that they do not consider lawyers as intermediaries who could engage in corrupt acts and/or be subject to anti-corruption rules and regulations. Respondents' answers to the question, 'has your

firm been subject to anti-corruption or anti-money laundering due diligence conducted by foreign clients?' confirms this assumption as two-thirds of respondents answered in the negative. See Chart 19 for a regional breakdown of the responses.



Finally, the survey results also showed that foreign companies rarely seek advice on issues of foreign bribery. Nearly 85 per cent of all respondents said they had never or rarely provided advice on this issue to foreign clients.

Conclusion

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.

Conclusions and recommendations

A. Summary of conclusions

Throughout this report, certain preliminary conclusions can be drawn from the survey data:

Perceptions of levels of corruption on the legal profession at home and abroad
Conclusion: Roughly half of all respondents perceive corruption to be an issue in the legal profession in both their home and in neighbouring jurisdictions.
Risks associated with international bribery and corruption
Conclusion: 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.
Level of awareness of the international anti-corruption regulatory framework
Conclusion: There is a dangerous 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.
The role of local bar associations, law societies and law firms in addressing the challenge of corruption
Conclusion: 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.

B. Recommendations

Based on the survey results, the following recommendations can be made to help the legal profession address the threat of corruption:

1. Undertake further research on the levels of corruption in the legal profession

The perception of corruption as a major issue within the legal profession is low. However, a significant proportion of legal professionals noted that they or someone they know have been approached to act as an agent in an international transaction that could be considered as corrupt under the rules and regulations included in the international anti-corruption regulatory framework.

In order to reconcile the gap between perceived awareness of corruption as a problem and the everyday corruption-related challenges faced by legal professionals, further research should be undertaken into the existence of international corruption in the legal profession.

2. Undertake industry-wide anti-corruption awareness-raising and training activities

To raise awareness of the risks of corruption to the legal profession and the instruments available for protecting oneself from these risks, the legal profession – led by bar associations, law societies, law schools and law firms – should do more to inform and train its professionals.

The IBA, in cooperation with the OECD and the UNODC, has already paved the way in this respect, with its *Anti-Corruption Strategy for the Legal Profession*. Training sessions for legal professionals on these issues have been held or are scheduled in Chile, Argentina, Mexico, Peru and Colombia. In 2011, these training sessions will expand to Asia and Eastern Europe. By 2012, the training will be expanded globally.

As the Strategy develops, it will also support the creation and promotion of anti-corruption modules for law school curricula. From the survey results, it appears that young lawyers are not being taught about this subject before entering professional practice. Education, training and awareness-raising at all levels is the key for the success in this industry-wide plan for lawyers.

3. Compliance programmes for legal professionals must: (a) include measures to combat bribery and international corruption; and (b) be disseminated through the firm

Law firms are encouraged to include measures to combat bribery and international anti-corruption in their compliance programmes. Although this should not be construed as a need to structure complex systems in addition to those already in place in some jurisdictions for anti-money

laundering, firms must understand the challenges and potential liability that a weak approach to anti-corruption could bring to the organisation. In the long run, the IBA intends to work on creating toolkits and other instruments to assist lawyers in tackling the risks and threats posed by corruption.

In the meantime, the recently adopted OECD *Good Practice Guidance on Internal Controls, Ethics and Compliance* for businesses and business organisations provides a good example of how such a compliance programme for legal professionals could look.

Annex 1

Geographical regions used in this report

Geographical regions in this report are composed by the following jurisdictions:

Africa: Algeria, Egypt, Ghana, Kenya, Nigeria, South Africa, Tanzania, Uganda, Zambia and Zimbabwe

Asia: Cambodia, China, Hong Kong, India, Japan, South Korea, Malaysia, Nepal, Pakistan, Singapore, Sri Lanka, Taiwan and Thailand

Australasia: Australia and New Zealand

Baltic States and Eastern Europe: Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Germany, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Sweden, Turkey, and Ukraine

CIS: Ukraine, Azerbaijan, Kyrgyz Republic, Moldova, Russia

European Union: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom

Nordic countries: Denmark, Finland, Norway and Sweden

Latin America: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela

Middle East: Egypt, Iran, Israel, Lebanon, Oman, Qatar, Syria, United Arab Emirates and Yemen

OECD Convention Parties: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States (There are 38 Parties to the OECD Convention. Representatives from 37 responded to this survey. The 38th Party is Iceland.)

UNCAC Parties: Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia, Bosnia, Brazil, Bulgaria, Cambodia, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Denmark, Egypt, El Salvador, Ethiopia, Finland, France, Georgia, Ghana, Greece, Guatemala, Honduras, Hong Kong, Hungary, Iran, Israel, Italy, Kenya, South Korea, Kosovo, Kyrgyz Republic, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Netherlands, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Tanzania, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Yemen, Zambia and Zimbabwe (This list only includes those UNCAC Parties where responses to the survey were submitted.)

Annex 2

Further reading

Colares, Juscelino F, *The Evolving Domestic and International Law against Foreign Corruption: Some new and old dilemmas facing the International Lawyer*, 5 Wash U Global Stud L Rev 1 2006

Fisch, Jill E & Rosen, Kenneth M, *Is There a Role for Lawyers in Preventing Future Enrons?*, 48(4) Villanova Law Review, 1097, 2003

Foley, Veronica & Haynes, Catina, *The FCPA and its Impact in Latin America*, 17 Currents Int'l Trade L J 27 2008-2009

Hatchard, John, *Recent Developments in Combating the Bribery of Foreign Public Officials: A Cause for Optimism?* 85 U Det Mercy L Rev 1 2007-2008

Jennifer D Faucett, *Legal Malpractice and Bribery: The Foreign Corrupt Practices Act and the Pitfalls it creates for Attorneys*, 29 J Legal Prof 213 2004-2005

Law 360, Beware of the UK Bribery Act
(Available at: www.lexmundi.com/images/lexmundi/PracticeGroups/BusinessCrimes/Law360June2010.pdf, last accessed 3 September 2010)

Nelson II, William Alan, *Attorney Liability Under the Foreign Corrupt Practices Act: Legal and Ethical Challenges and Solutions*, 39 U Mem L Rev 255 2008-2009

Weinstein, Martin J, *The World of International Compliance: What Transactions Lawyers Need to Know to Perform Ethically and Responsibly*, 29 Hous J Int'l L 311 2006-2007

Zagaris, Bruce & Ohri, Shaila Lakhani, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 Law & Pol'y Int'l Bus 53 1998-1999

Acknowledgements

The process to develop the survey and report was led by Gonzalo Guzman, Senior Staff Lawyer from the IBA Legal Projects Team with the kind support of Nicola Bonucci, Patrick Moulette, Leah Ambler and Mary Crane (OECD), Dimitri Vlassis and Enrico Bisogno (UNODC), Nick Benwell (Simmons & Simmons), Mike Schwartz and Brent McDaniel (KPMG LLP) and IBA Legal Interns Sofia Laljee and Althaf Marsoof.

For more information about the Anti-Corruption Strategy for the Legal Profession:

Please visit our website at www.anticorruptionstrategy.org.

To participate in this initiative, please contact Gonzalo Guzman, IBA Senior Staff Lawyer, at gonzalo.guzman@int-bar.org.

