

[Print This Article](#)[<< Return to Survey Spotlights Corruption in Globalized Legal Profession](#)

Survey Spotlights Corruption in Globalized Legal Profession

[Jaclyn Jaeger](#)

November 09 2010

A new survey has found widespread corruption in the legal profession around the world and serves as a stark reminder to companies about the potential risks posed by outside advisers.

Nearly half of 642 lawyers in 95 jurisdictions around the world surveyed by the London-based International Bar Association said corruption was a problem in their locale. One-third of the respondents said a lawyer they know has been involved in international corruption, and more than one in five said they have or may have been approached to take part in a transaction that could reasonably be suspected to involve international corruption.

Gonzalo Guzman, senior staff lawyer for the legal projects team of the IBA, says he wasn't all that surprised by the results. "International business lawyers are very good at advising clients on how to avoid and prevent corruption, but they're not really taking the same measures and the same precautions in their own law firms," he says.

Countries that ranked highest in corruption were Pakistan, China, and Guatemala, where 100 percent of respondents said they witnessed corruption within their legal practice. Other regions with high levels of corruption—ranking higher than 70 percent—were Africa, Latin America, and Eastern Europe. "Some areas of the world were even worse than we thought," says Guzman.



Klotz

"Some countries are very difficult to do business in without being exposed to corruption," says James Klotz, a partner at law firm Miller Thomson in Toronto and co-chair of the firm's international business transactions group. "That's not to say that business can't be done in those countries without corruption, but it's hard."

Ranking among the cleanest places to do business were Canada, Uruguay, Luxembourg, Japan, and Denmark. In these countries, none of the lawyers surveyed said corruption was a problem. The United States and Britain fell into the middle of the pack, with the percentage of attorneys who say that corruption was a problem at 39 and 38, respectively.

The extent of corruption in each country depends upon a number of factors, including culture, laws, and systems—some of which are "fundamentally more transparent than others," Klotz says. Typically, corruption

happens in areas with little to no transparency. “It’s easier to get away with it,” he says.

“International business lawyers are very good at advising clients on how to avoid corruption and prevent corruption, but they’re not really taking the same measures and the same precautions in their own law firms.”

—*Gonzalo Guzman,*
Senior Staff Lawyer,
IBA

The report’s findings highlight the anti-bribery and corruption risks that lawyers and law firms pose, similar to those from other types of outside advisers companies commonly employ, says Michael Schwartz, a principal in the forensic practice of KPMG. “All of the anti-bribery and corruption compliance efforts that companies take with other third parties, they should consider in the context of lawyers and law firms around the world,” he says. And many firms say they are *not* working to ferret out corrupt practices. Fewer than 40 percent of respondents to the study said eliminating corruption was a priority at their firm.

Risk Mitigation

Companies, Guzman says, are often sharp at spotting the risks posed by agents, distributors, and joint ventures. But spotting corruption at professional services firms—well, not so much, he claims.

For starters, Klotz says, “The laws themselves are complicated.” What may be a questionable act in one country is acceptable in another, such as gift giving. Therefore, he says, companies should tailor their anti-corruption policies to each country’s unique risks, spelling out both to employees and outside advisers what is permitted and what is not.

That also means conducting due diligence on your advisers. “Have the lawyer provide some basic information about the firm and about the principles of the firm,” Schwartz says. He also advises companies that hire lawyers abroad to check references.

Check, too, for certifications. “Very few clients are asking for anti-corruption certificates from lawyers,” says Guzman. In fact, most respondents to the study said fewer than a quarter of their clients require them to certify their anti-corruption compliance.

The few companies that do request certification from the firms they work with are the corporate “big players”—such as Siemens and Baker Hughes—that have previously faced anti-corruption criminal sanctions, and only now are taking the necessary precautions, says Guzman. If the outside firm refused to provide a certification, that’s a red flag.

Companies should pay heed to a “long list of warning signs,” Klotz says. “Often, it’s the deals that don’t make a lot of sense.”



Schwartz

For instance, keep an eye out for unusual payment patterns or financial arrangements. Understand how the

funds being provided to the law firms are being spent, particularly any entertainment-related expenses, and ask for documentation related to that, Schwartz says.

MAJOR FINDINGS

What follows are the major findings of IBA's survey on anti-corruption:

- 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 percent—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 profession they know has been involved in international corruption offenses.
- Nearly 30 percent of respondents said they had lost business to corrupt law firms or individuals who have engaged in international bribery and corruption.
- Nearly 40 percent 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 percent of survey respondents were aware of the FCPA and its scope, while 30 percent were aware of the U.K. Bribery Act and its scope.
- A total of 42 percent 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 percent of respondents recognized 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 percent 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.

Source

 [IBA Survey on Anti-Corruption](#) (2010).

Anti-corruption experts offer several other red flags to watch out for prior to negotiating any third-party relationship, including:

- Unusually high commissions;
- Payments that are diverted to offshore jurisdictions;
- Lack of transparency in expenses and accounting records;
- Apparent lack of qualifications or resources; and
- Whether a joint venture partner or representative has been recommended by an official of the potential governmental customer.

A history of corruption in a country is also a red flag.

More to Come

Guzman says the survey is the first step in a global effort by the IBA and the Organization for Economic Cooperation and Development to educate bar associations and law societies on how to address the various challenges posed by corruption. “Every country that we are visiting, we are planting a seed for the bar associations to create strategies to confront corruption in those regions,” he says. Other initiatives will include training sessions, academic outreach, and additional research.

“Bribery and corruption are at odds with everything that it means to be a lawyer,” says Stephen Zack, president of the American Bar Association. He says the ABA is taking similar initiatives “by educating and empowering members of the legal profession to act against it.” In addition, he says, the ABA “continually examines, updates, and strengthens” its Model Rules of Professional Conduct for lawyers practicing in the United States.

“Anti-corruption compliance is becoming a very important part of the state of compliance today, especially for American companies,” Guzman says.

Most companies in all industries are well aware of the risks posed by third parties, especially on the heels of Foreign Corrupt Practices Act, the U.K. Bribery Act, and other anti-bribery corruption codes, but they don’t always extend their compliance practices to the law firms they hire, Schwartz says. Given the levels of corruption revealed in the survey, now might be a good time to start.