LegalWeek Intelligence

Staying ahead of the game

Using your company's data to prevent bribery and corruption

Kroll®

How to avoid bribery and corruption charges in the digital age

Falling foul of bribery and corruption charges can be disastrous for any business. Indeed, for some it can taint their entire industry. Legal and compliance teams face constant pressures to stay one step ahead of the game and snuff out any misconduct before it takes place. But while companies are doing more than ever to bolster their anti-bribery regimes, many still lack the tools and early warning systems that could help flag these risks in advance.

A Legal Week Intelligence and Kroll survey found that while almost 90% of respondents said their company's compliance programme specifically addresses bribery and corruption, the extent to which safeguards are put in place to detect and prevent those risks varied greatly.

Almost three quarters of those surveyed said their company gives compulsory anti-corruption training to all employees, while almost two thirds said their company carries out onsite anti-corruption spot checks or third-party audits. But fewer than half said their company analyses internal data to identify anomalies and flag potential risks—something that Kroll says will give legal and compliance teams more of an edge in policing bribery and corruption.

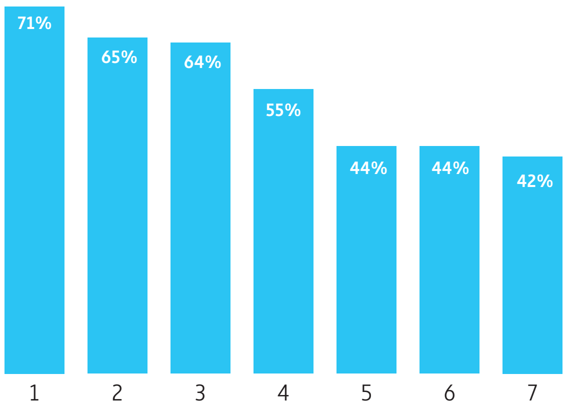
90%
of respondents said their company's compliance programme addresses bribery and corruption

The devil is in the data

"Companies today collect large amounts of data from numerous sources but this is not always effectively linked up. As large organisations develop, particularly through acquisition, the data can sometimes become disjointed and localised. Companies can benefit from having a structured approach to centrally gathering and analysing specific data from across the company, in order to identify possible anomalies and potential red flags of fraudulent activity," says Matthew Weitz, a senior director at Kroll's investigations and disputes practice based in London.

"For example, a multinational company might compare remuneration rates for sales agents in different regions, to identify regions that appear to be spending above the norm, or analysing subjective profit and loss account data to identify regions that may be developing a 'slush fund' through the use of higher risk accounts such as marketing or consultancy fees. Fraud can occur at any point in the value chain. In the supply chain, we have seen data analytics being used to identify payments to suppliers in a country from which there was no

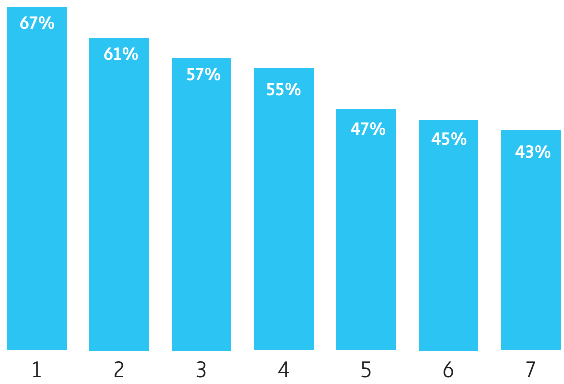
Which of the following tools has your organisation used in the past 12 months to detect or prevent bribery / corruption?



1 = Compulsory anti-corruption training to all employees
2 = Onsite internal anti-corruption audits / spot-checks
3 = Third-party audits
4 = Gifts / hospitality sponsorship scorecard
5 = Periodic review of third-party data
6 = Analysis of large data sets to identify anomalies and potential risks
7 = Tailored regional anti-corruption training

*Respondents could select more than one answer

Does your organisation plan to use any of the following tools in the next six months?



1 = Compulsory anti-corruption training to all employees
2 = Gifts / hospitality sponsorship scorecard
3 = Onsite internal anti-corruption audits / spot-checks
4 = Third-party onboarding checks
5 = Analysis of large data sets to identify anomalies and potential risks
6 = Periodic review of third-party data
7 = Tailored regional anti-corruption training

*Respondents could select more than one answer

legitimate supply. This highlighted a fake company, which was being used to embezzle funds from the organisation," Weitz says.

That underscores why it is important for companies to ensure such data collection is joined up across all geographies so that compliance officers or legal teams can get a more comprehensive overview of the patterns and trends that might point to potential wrongdoing.

Of the roughly 40% of respondents who use data in this way, just under half were from financial services — an industry that Weitz says is typically better equipped to collect and manage large amounts of data for regulatory reasons such as monitoring for fraud and money laundering. There is one problem with this type of regulation: strict detection rules imposed on financial services can become formulaic and do not always work, Kroll says. But without that regulatory guidance, some companies outside the financial sector might not know what to look for, leaving them exposed to potential malpractice.

71%
have used compulsory anti-corruption training for all employees in the past 12 months

Even so, some companies from other sectors are beginning to recognise the importance of using their own data as a way to detect and prevent bribery and corruption.

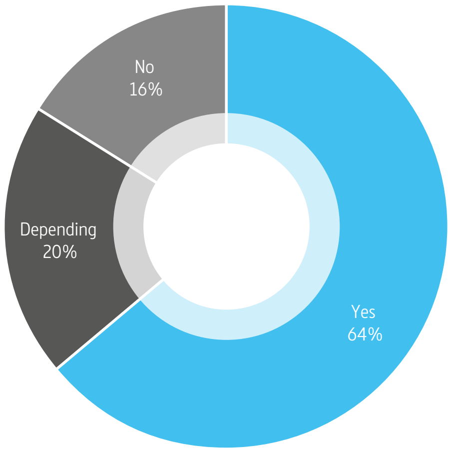
"We've been doing more, and plan to do more," says Mark Ohringer, general counsel at global property firm JLL. "The industry as a whole is getting more sophisticated and with our focus on data and the increasingly important role that technology plays in real estate, the better placed we are to be able to mine our own systems in order to detect any red flags before a potential bribe scenario arises."

Ohringer says his company looks for clues such as payments in exact sums, say $25,000, with a very vague description, which might indicate a bribe to a government official. But he says the bigger risk for his company is incoming bribes from vendors who want its business, given the amount of goods JLL buys for the buildings it manages. That means, for example, sifting through invoices for anomalies such as an

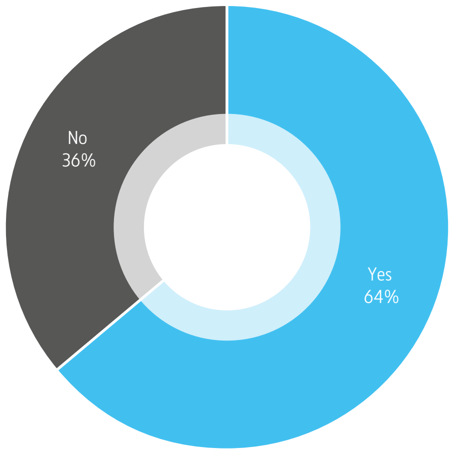
Key findings

- **89%** of companies surveyed have a compliance programme that specifically addresses bribery and corruption risk
- The most commonly cited tool used to prevent bribery and corruption over the past 12 months is **compulsory anti-corruption training to staff** and the least cited is tailored regional anti-corruption training
- **Middle East & North Africa** and **Western Europe (including Northern Europe)** are the most commonly cited destinations for expansion over the past five years
- **64%** consider if expanding into new jurisdictions presents an increased bribery/corruption risk
- Companies most commonly avoid **South America** due to perceived bribery/corruption risk
- Of the respondents that experienced a bribery/corruption event, the most common region for the event to occur in was **Middle East & North Africa (38%)**
- **85%** say they are either 'very comfortable' or 'somewhat comfortable' that their company's structures are sufficient to prevent/detect bribery and corruption
- Respondents say **non-management employees (58%)** are most commonly the perpetrators in bribery/corruption events; experienced and board-level staff the least common (8%)

Do you consider if expanding into new jurisdictions presents an increased bribery / corruption risk?



Has perceived bribery and corruption risk resulted in your company not doing business in certain markets?



order for an unusually large amount of goods relative to the size of a property. JLL also uses search tools to monitor cloud-based email communications for potential leads.

"The sheer number of emails sent each day is mind-boggling and we are getting smarter about pinpointing key words and phrases to help identify potentially suspicious activity," he says. "This is a daunting amount of information but we have been conducting tests. The majority may end up being false positives but if you're going to do it, you have to chase that stuff down."

Ohringer adds that his company has an internal audit team, which oversees an anti-bribery programme that involves doing spot audits of business lines in high risk countries. That helps flag any potential concerns but also acts as a deterrent for anybody thinking about misbehaving.

As well as being mindful of laws such as the UK Bribery Act, some industries also have regulatory codes that are just as important to follow when it comes to bribery and corruption.

"We adhere to the ABPI code, which governs all manufacturers of prescription-only medicines, and the code is very strict about what is and what is not acceptable behaviour," says Funke Abimbola, general counsel and company secretary at Roche for the UK and Ireland. "There is a blanket prohibition about giving gifts or pecuniary advantages or benefits to members of the healthcare profession with a view to inducing them to promote our medicines. So that's quite separate from the legal framework but everyone is aware of the ABPI code implications as well — and there are strict repercussions if you get that wrong."

That could include employees being dismissed, the company being discredited, or in the most severe cases, bringing the entire pharmaceutical industry into disrepute.

"We're so heavily regulated that it's no surprise to anyone that we need to be mindful of anti-bribery — every Roche affiliate has a different industry code that applies to it but all of them have some kind of provision around trying to influence healthcare professionals with gifts and so on and there are lot of restrictions around that, so it's part of our DNA and the legal framework is just another layer of that," Abimbola adds.

38%
said their company had avoided South America because of bribery and corruption risk

Risk and geography

Bribery and corruption concerns are also high on the list of risks that companies consider when seeking to expand into new jurisdictions. Just under two thirds of survey respondents said such expansion plans increased their company's risk of being exposed to bribery and corruption, with another 20% saying it depends on the jurisdiction in question.

South America, Sub-Saharan Africa and Russia topped the list of markets that respondents said their companies had avoided because of the risk of bribery and corruption.

Katherine Lee, legal counsel at Animoca Brands in Hong Kong, says her company would seek to engage a local law firm to help provide guidance and minimise any potential risks when entering new jurisdictions. She adds that hiring the right staff in these new markets is also key to avoiding any mishaps.

Some argue that governments with strict bribery and corruption laws, such as the UK and the US, also need to be more supportive of companies seeking to do business in regions where ethical standards might be less scrupulous.

"The choice is often either to accept the local practices — which you can't do — or walk away from the business," says Pavel Klimov, general counsel at Unisys for the UK and EMEA. "But another route would be for governments to apply pressure either through diplomatic channels or trade relations to try and change behaviours so that companies who want to do business in foreign countries can do so in an ethical way and as is expected of them."

Given those more robust legal frameworks in western Europe, the survey found that no respondents had avoided doing business in the region because of bribery and corruption concerns. But such a stance may hint at a degree of complacency. Of the 25% of respondents whose companies

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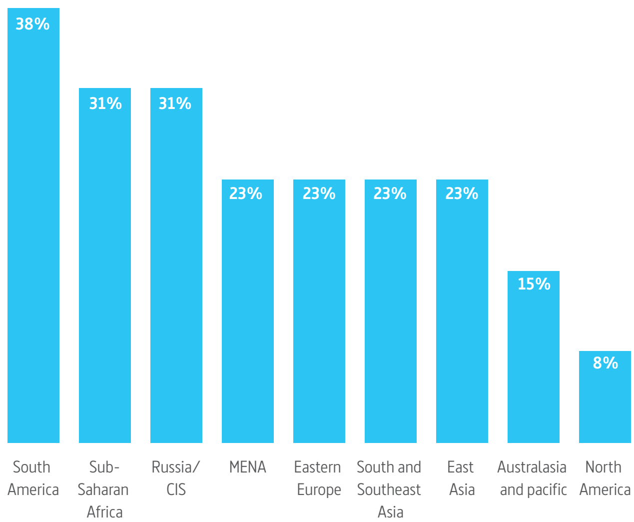
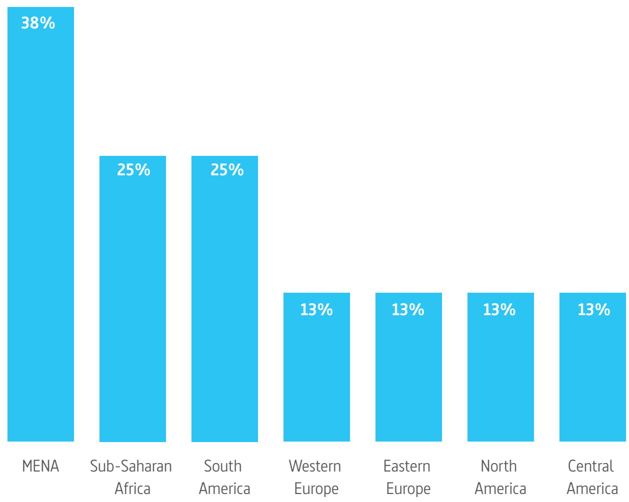
Mark Ohringer
General counsel, JLL

Which markets has your company avoided because of bribery/corruption risk?



*Respondents could select more than one answer

In which region did the bribery/corruption events occur?



*Respondents could select more than one answer

had dealt with instances of bribery and corruption in the past three years, 12.5% of those incidents occurred in western Europe and another 12.5% in north America.

Knowing your third-party relationships

"Bribery and corruption can happen in any jurisdiction," says Weitz. "And it's not just about where you operate, it's who you operate with."

That is particularly relevant for companies involved in mergers and acquisitions (M&A). Around 60% of respondents said their corporate M&A due diligence included a detailed review of target businesses.

"There are specific questions we ask the management of the companies with which we are in talks to acquire, and specific things we look for," says Ohringer. "We proactively seek to have those discussions with senior management about whether they have had any problems in the past — you don't want to buy the problems, or at least you need to know if there have been any in the past so you can talk to the authorities upfront and ensure they are aware that those problems are ring-fenced from any current M&A activity."

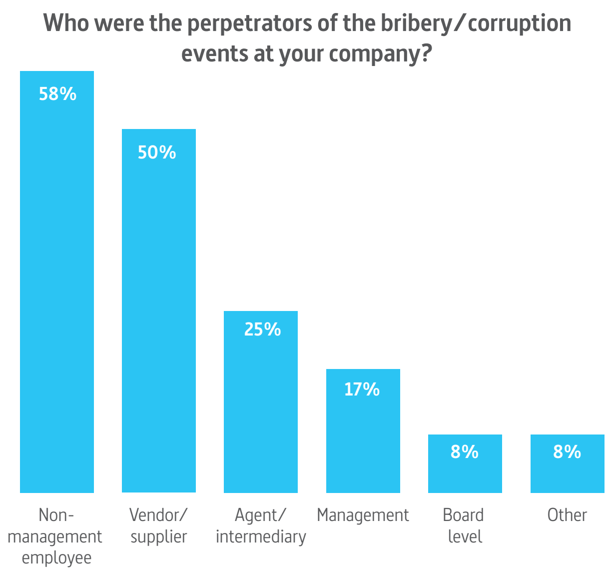
38%
of bribery/corruption events at respondents' companies had occurred in MENA

Of the quarter of respondents who said their companies had dealt with bribery and corruption recently, more than half of those incidents had been detected by either a compliance team or through an internal audit. Just over a third of those incidents were raised by an internal whistleblower.

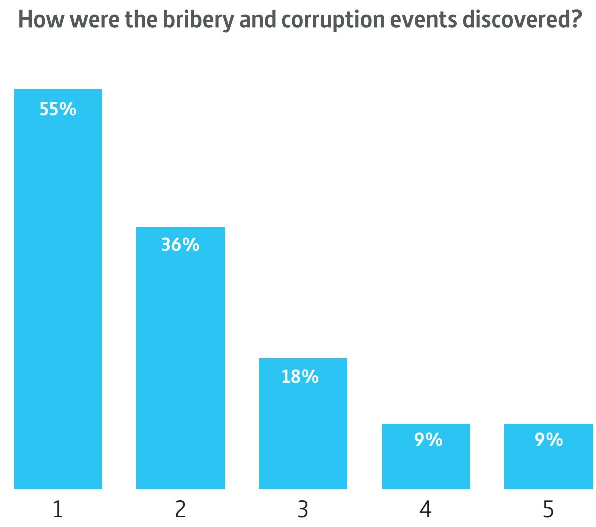
Weitz says many of the cases that Kroll is hired to investigate typically originate from whistleblowers and sometimes data analytics might not have been enough to flag those transgressions if somebody is particularly determined to hide a bribe. But Weitz says it is still important for companies to adopt a range of safeguards, including data monitoring, to discourage such behaviour.

"It needs to be a holistic approach," he says. "Having a whistleblower hotline and a corporate culture that would encourage whistleblowing is important but [that needs to be balanced] with some proactive work like data analytics — it might not tell you the whole story but it might just highlight something that prompts a deeper investigation and pre-empts what the whistleblower was going to say."

Weitz adds that Kroll is seeing a trend for companies to focus more on reviewing third-party relationships and particularly focusing on onsite audits of distributors and other third-party agents, in order to identify possible control weaknesses or red flags



*Respondents could select more than one answer



1 = By the compliance team / an internal audit
2 = By a whistleblower at our company
3 = By management at our company
4 = By an external whistleblower
5 = By the regulator

*Respondents could select more than one answer

of fraud or bribery. These diagnostic reviews can help companies to deal with risks before it is too late and help their partners to fully understand their ethical requirements.

Klimov says Unisys has a dedicated vetting team based in India, which conducts reviews of new suppliers or business partners, sometimes engaging external support to carry out local on-the-ground checks. Those audits will be more rigorous, depending on what type of service is being provided. Lobbyists or government marketing consultants, for instance, would be subject to far more stringent screenings.

"If those reviews come up with certain issues, then they will escalate it and then maybe a more in-depth investigation is carried out on that particular organisation if we feel it is merited," he says.

But sometimes the risks are closer to home. The survey found the biggest perpetrators of bribery and corruption incidences were non-management employees, followed by vendors and suppliers, and then agents and intermediaries.

For Ohringer, this underscores the importance of recognising what job roles are likely to be more vulnerable and targetting any prevention and detection measures at them.

"The vast majority of people would never get themselves involved in a bribery situation, so I don't have to worry about the vast majority of the company because they're just not in a high risk position to either pay one or take one," he says.

Taking action, staying on guard

So what do companies do when they suspect something suspicious is

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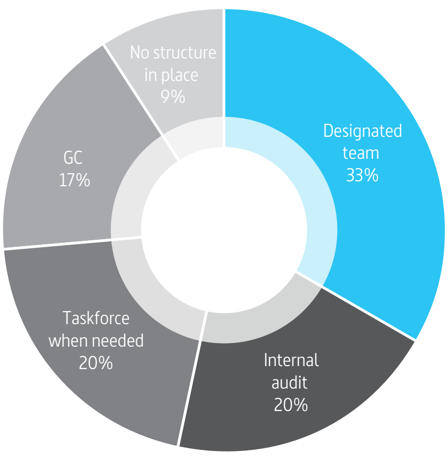
Funke Abimbola
General counsel and company secretary, Roche UK and Ireland

going on? About a third of survey respondents said they have a dedicated investigations team, while around 16% said the responsibility rests with general counsel. Meanwhile, about 20% of respondents said investigations are managed by internal audit — something Weitz says could potentially cause problems as these investigations can drag for a long time and therefore could prevent those auditors from performing other important parts of their role.

Additionally, he adds: “Conducting an internal investigation requires a high level of independence and objectivity. While internal auditors should also be independent of the business they audit, they can be closer to management and staff and may not be ideally placed to be entirely objective on very sensitive matters.” Around 30% said the companies surveyed had no permanent investigations structure or no structure in place at all.

Despite this, the majority of survey respondents — some 85% — said they were either very comfortable or somewhat comfortable that the structures their company has in place are sufficient to detect and prevent cases of bribery and corruption. Kroll suggests that might be a sign of overconfidence.

Which part of your organisation is responsible for investigating allegations of bribery and corruption?



“Sitting in the company head office, everything might appear to be under control, but how many saying they are comfortable have been out to a remote subsidiary in China or eastern Europe and seen how business is actually being conducted there?” asks Weitz. “You might have polished global procedures and controls but are they actually adaptive to what’s happening on the ground?”

For those respondents whose companies had uncovered cases of bribery and corruption, roughly two thirds of those were dealt with internally, while about a third hired outside investigators of some description. Abimbola, for instance, says Roche will typically investigate such matters internally, but Ohringer says JLL takes it on a case-by-case basis.

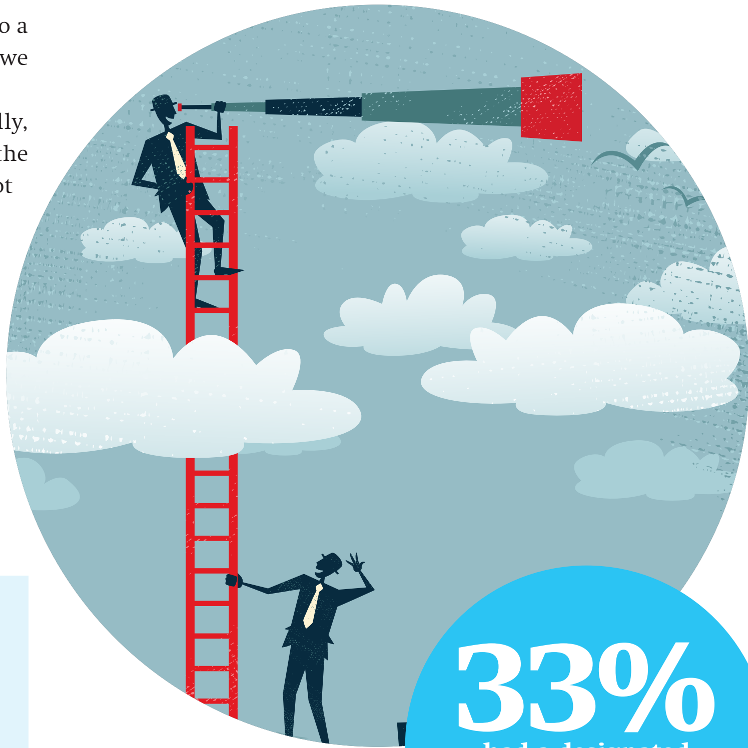
“We’re not staffed to do really big investigations, so if there is a lot of documentation to look at such as invoices or a trove of emails, for example, this could be a claim that comes in through our whistleblower hotline, then we would look to outsource to a team of external investigators as we feel it is not something we can do ourselves," Ohringer says.

Klimov says Unisys normally handles such matters internally, though on occasion it might employ outside legal help if the incident took place in a territory where the company does not have a strong presence and the investigations team needed to understand the legal processes in that jurisdiction, and what the limits of any investigation would be.

"Usually, we would hire local lawyers and then if we needed an investigation, they would be able to recommend one of their specialist investigation agencies that we can use; but it's not prevalent, often these investigations are done internally with support from external lawyers rather than specialist investigators," he says.

For companies that are having to navigate cuts to their legal and compliance budgets at the same time as they are increasingly expanding into new jurisdictions, the cost efficiencies of being more proactive with prevention can soon become clear.

"Companies need to appropriately allocate resources and be smart about it, using data in a way that can identify the real issues," says Weitz. "Prevention and early detection are probably more cost effective than waiting for it to be too late — then you've got the cost of the investigation and you've got the cost of the reputation damage as well."



33%
had a designated team for investigating investigating allegations of bribery and corruption

Methodology

This research was conducted by Kroll in association with Legal Week Intelligence by phone and email globally between July and August 2016. Respondents were based mainly in the UK (64%), Sub-Saharan Africa (8%), the Middle East (9%), Australia and Oceania (4%), Asia (4%), South Asia (3%), Europe (3%) and Latin America (1%). By industry, respondents hailed from financial services (37%), hospitality & leisure (8%), media (8%), business services (6%), engineering & construction (6%), transport & logistics (6%), extractive industries (5%), government & public services (5%), insurance (5%), manufacturing (5%), pharmaceuticals & life sciences (3%), power & utilities (3%), entertainment & media (2%), law (2%) and technology (2%). The most commonly cited job titles were general counsel/legal director (28%), compliance officer/manager (22%), in-house lawyer (18%), other (17%), director (4%), partner/senior partner (4%), chief financial officer/financial director (3%) and managing partner/CEO (3%). All responses were kept strictly confidential in accordance with Market Research Society rules.

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Matthew Weitz
Senior director, investigations and disputes practice, Kroll

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