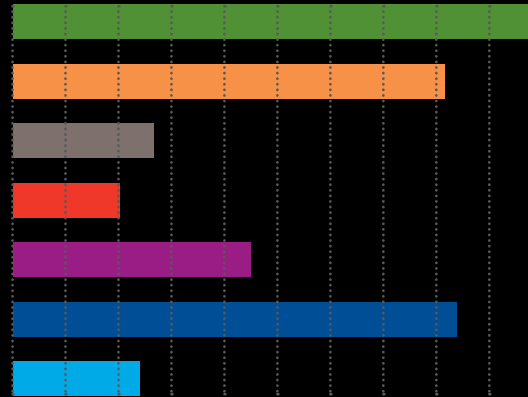


International Business Risk Survey

2013



Compete and Comply

Balancing growth and compliance is the dual challenge of all successful multinational corporations. In a global economy, a company's continual expansion across borders into new markets creates a never-ending stream of business risks. That is why we created the *Winston & Strawn International Business Risk Survey 2013*.

We're pleased to share with you our survey findings, which we believe will give you valuable insights into how your in-house legal peers in large international corporations are anticipating, preventing, and mitigating the risks associated with four significant business challenges:

- addressing data privacy and protection across borders,
- navigating antitrust and competition regulation,
- controlling the threat of bribery and corruption, and
- orchestrating cross-border joint ventures and strategic alliances in emerging and high-growth markets.

In addition, to express our appreciation to the many top counsel in Greater Europe and in North America who took the time to participate in the survey, we are making donations to two international organizations, UNICEF and International Senior Lawyers Project.

Sincerely,
Tom Fitzgerald
Global Managing Partner

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Data Privacy and Protection

KEY HIGHLIGHTS

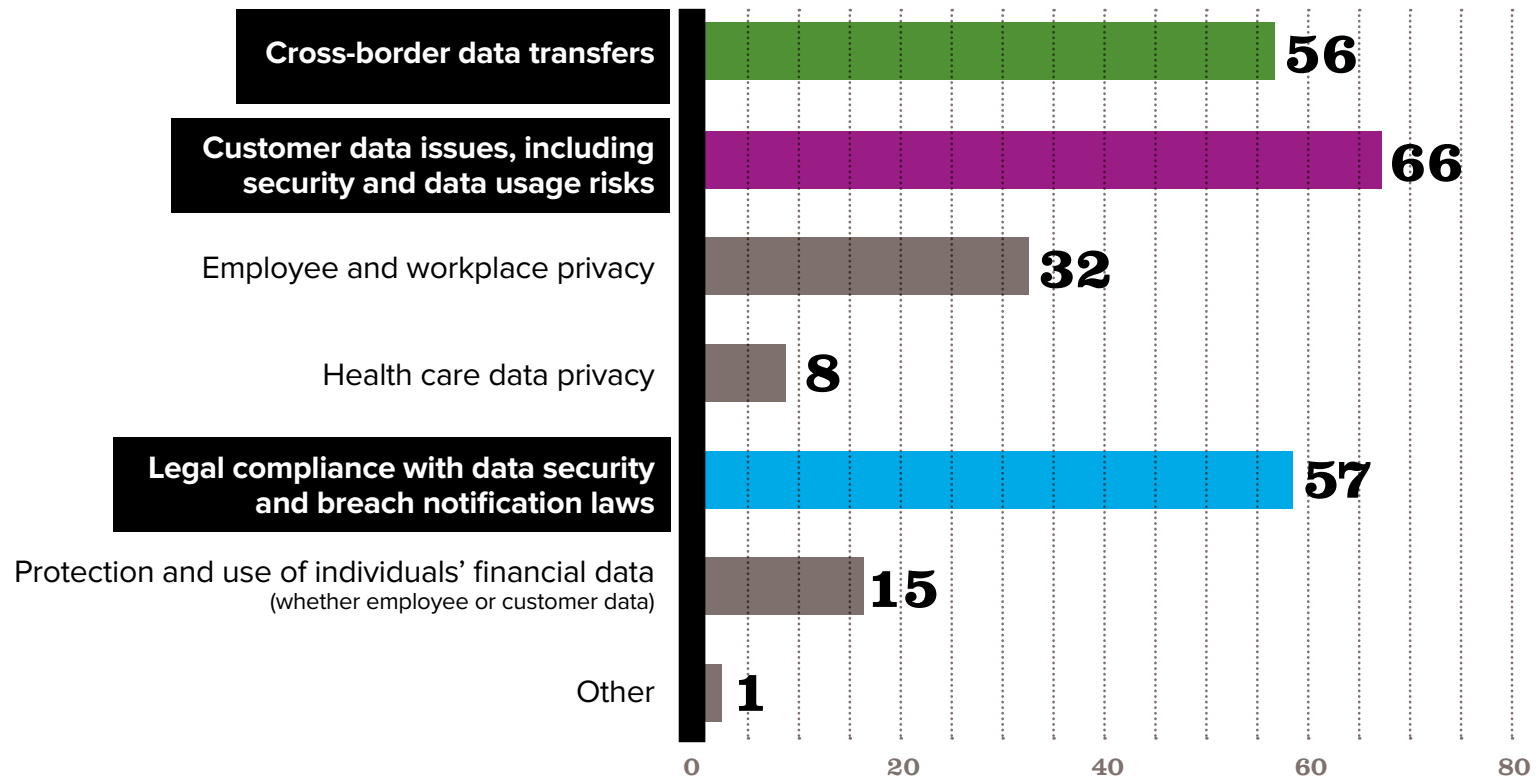
- Concern about customer data—including data security and risk issues—ranks first among survey participants seeking to comply with data privacy laws worldwide. Tied for second are cross-border data transfer and legal compliance with data security and breach notification laws.
- Most respondents rely on a combined legal and compliance function to handle data privacy law compliance, although there are many variations involving departments as diverse as IT, marketing, and human resources.
- Participating counsel indicate a greater concern about the risks associated with data privacy and protection in Europe and North America than they do in other markets, including the BRIC countries (Brazil, Russia, India, and China).

“Interestingly, it is the potential for loss of brand equity that responding corporate counsel identify as their most significant concern. In this sense, they are well-aligned with their business-side colleagues. Given this ‘external’ focus, they should continually re-evaluate the effectiveness of their data-protection policies, procedures, and training, including domestic and cross-border compliance.”

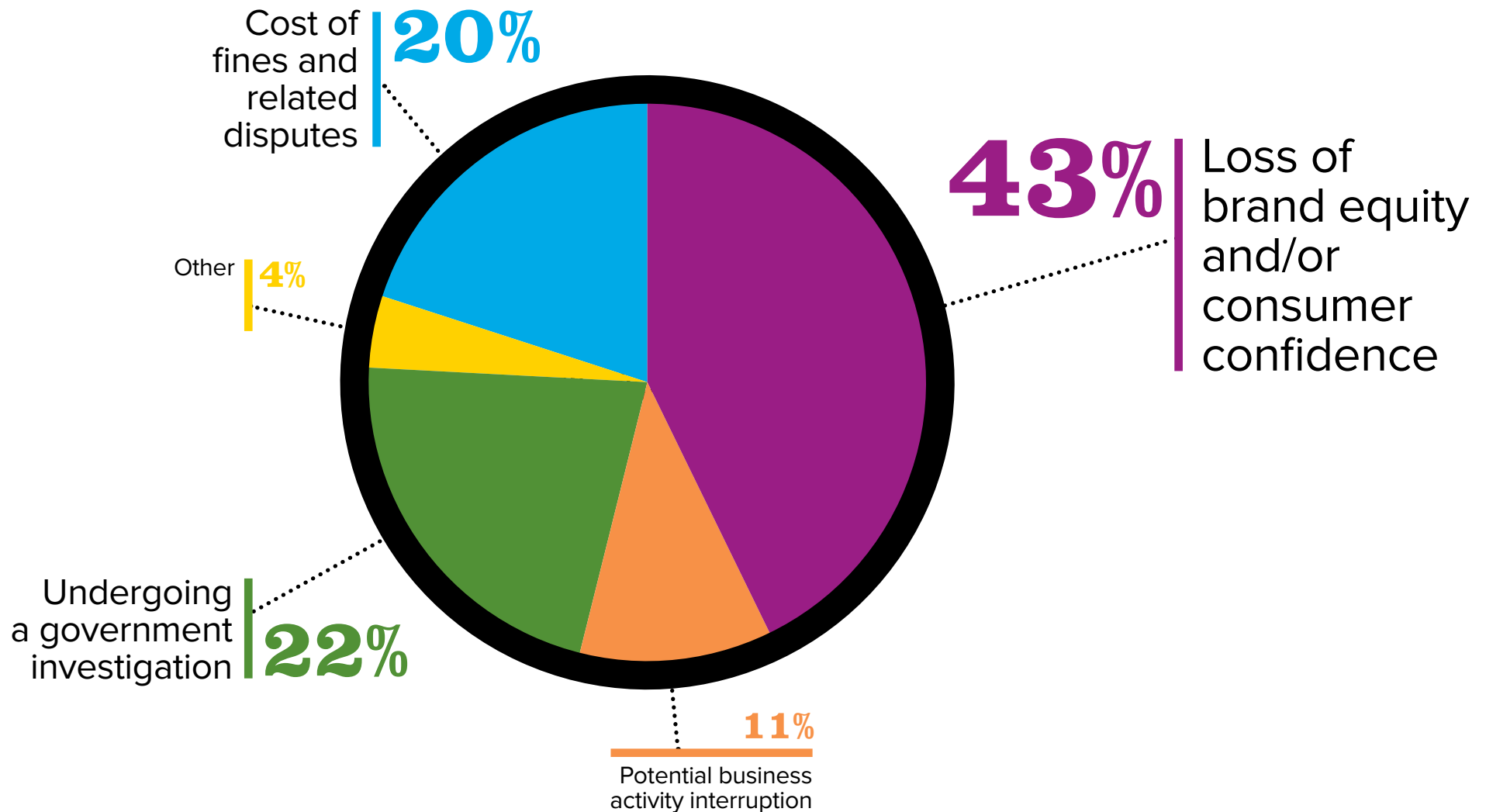
Liisa Thomas

Winston & Strawn, Partner, Chicago

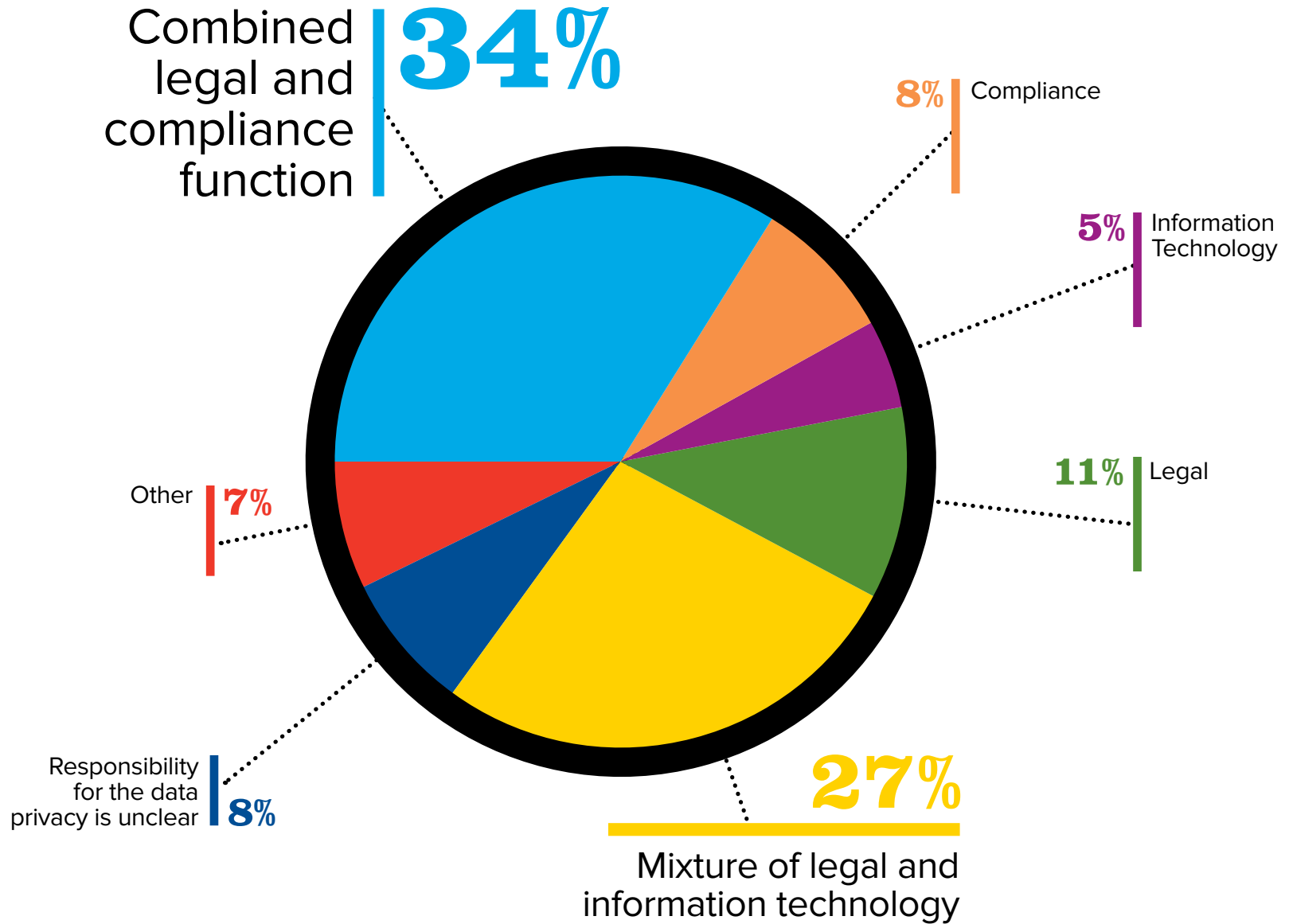
What are your company's top two data privacy concerns today?



What is the primary concern driving your company's compliance with data privacy laws worldwide?

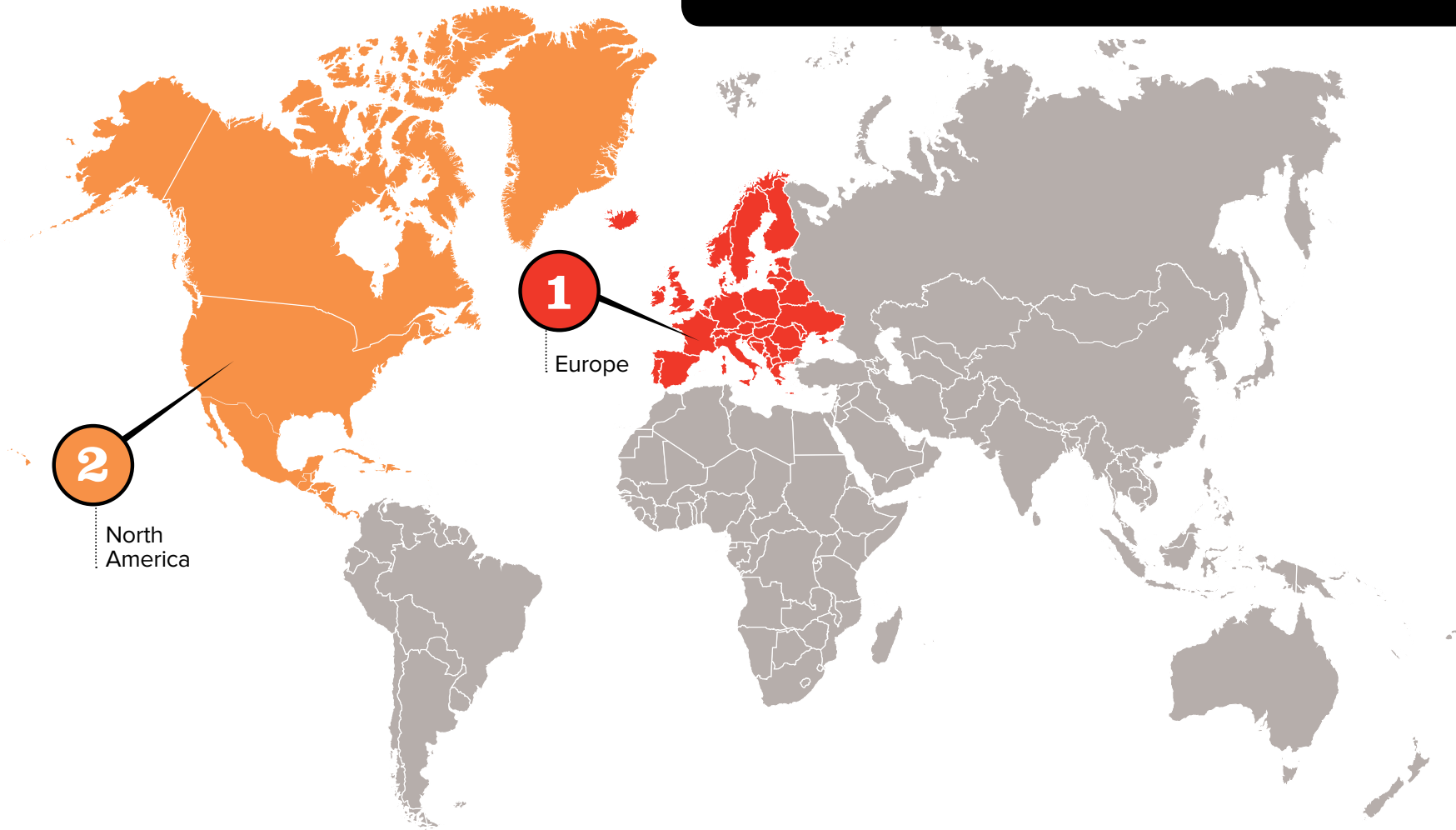


Who handles your company's compliance with data privacy laws?



In which regions/countries does compliance with data privacy laws pose the greatest concern to your company?

Although 40+ countries worldwide have data privacy laws, corporate counsel respondents worry about risks of data privacy and protection mostly in Europe and North America. It is a lower concern for them in other markets, including the BRICs.



Actions in-house counsel can take:

FINDINGS:

- 1 First among survey respondents' data privacy concerns are customer data issues. Tied for second are cross-border data transfer and legal compliance with data security and breach notification laws.
- 2 Loss of brand equity and/or consumer confidence is the primary concern of companies for complying with data privacy laws worldwide.
- 3 In-house counsel respondents indicate a greater concern about the risks associated with data privacy and protection in Europe and North America than they do in other markets.
- 4 Most respondents rely on a combined legal and compliance function to handle data privacy law compliance, and there are variations involving departments such as IT, marketing, and human resources.

RECOMMENDATIONS:

- Have effective data security plans in place, make sure employees know about them, and conduct regular audits to make sure they are working.
 - Ensure that your company has procedures for transferring data across borders and that they conform to legal requirements of both the “sending” and “receiving” countries.
- Consider ranking the data privacy and protection legal risks to your company based on your industry and the countries where you operate. This will help you focus your efforts to ensure compliance.
- Addressing data privacy and protection law in these regions is a big step towards establishing solid data privacy compliance in your company. It then provides a structure to address obligations in other jurisdictions where there may be compliance risks.
- When more than one area has responsibility for data privacy and security compliance, responsibilities must be completely clear in order to ensure no issues fall through the cracks. Regular communications and coordination becomes even more important.

Antitrust/ Competition

KEY HIGHLIGHTS

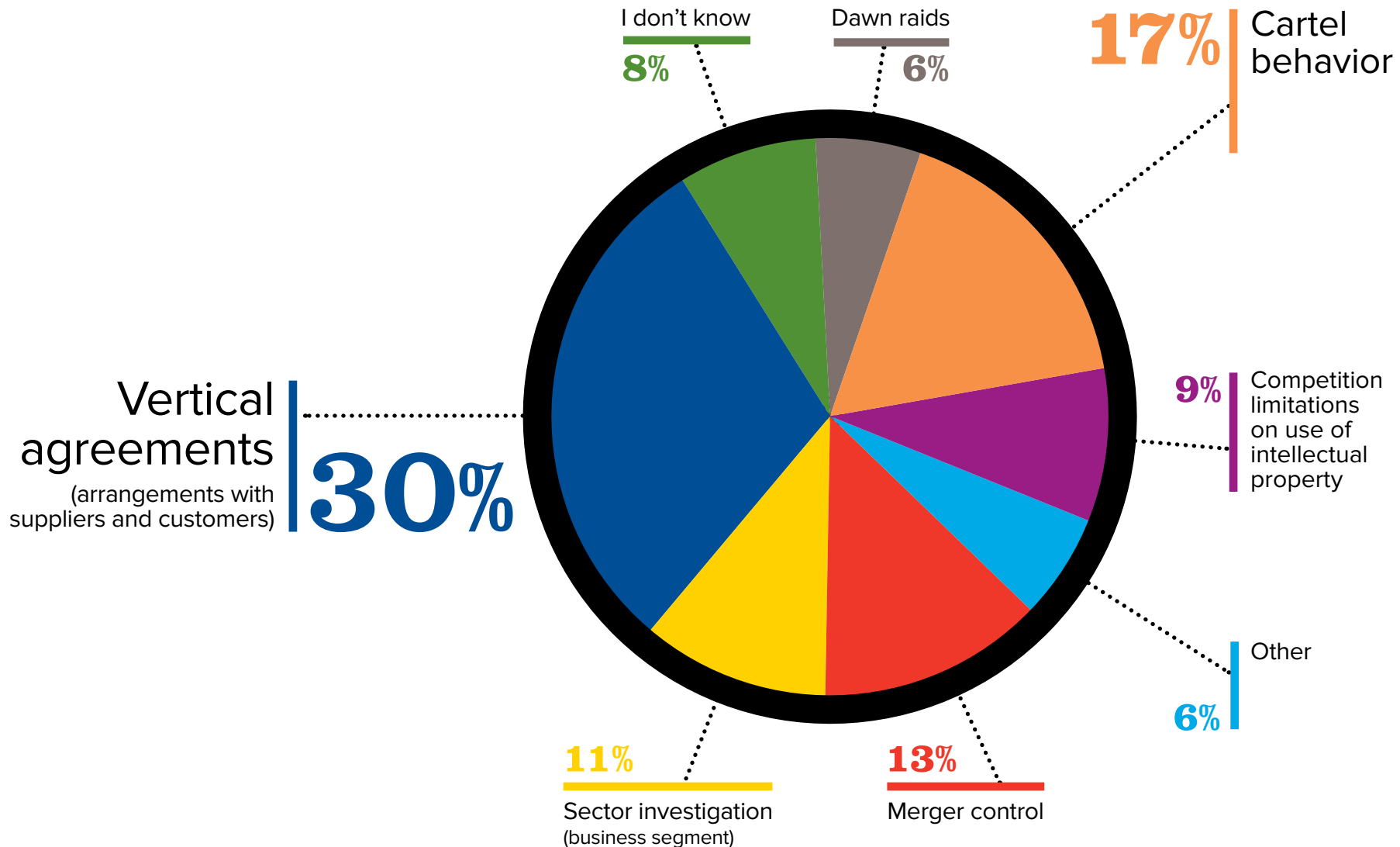
- Europe (including the United Kingdom) and the United States top the list of geographies in which corporate counsel most fear antitrust/competition risks.
- Vertical agreements (with suppliers and competitors) is the area of antitrust/competition law presenting the greatest threat to survey respondents, followed by cartel behavior, with merger controls a lesser concern today. The areas of their businesses that respondents find most susceptible to regulatory inquiries are arrangements with competitors, supply agreements, and joint ventures.
- Despite widespread policies and training among respondents, antitrust/competition compliance programs are vulnerable to risk as more than half of those surveyed reported they had no antitrust/competition audit processes or risk rankings.
- Nearly half of the surveyed companies have been the subject of an antitrust investigation, and 35% of total respondents have experienced investigations in multiple jurisdictions.

“US-based corporate counsel should be sure to monitor anti-competitive practices effectively to avoid cartel inquiries. As our findings indicate, this threat is highly recognized among Europe-based counsel, where regulators’ suspicion of cartels has triggered many investigations and fines.”

Peter Crowther

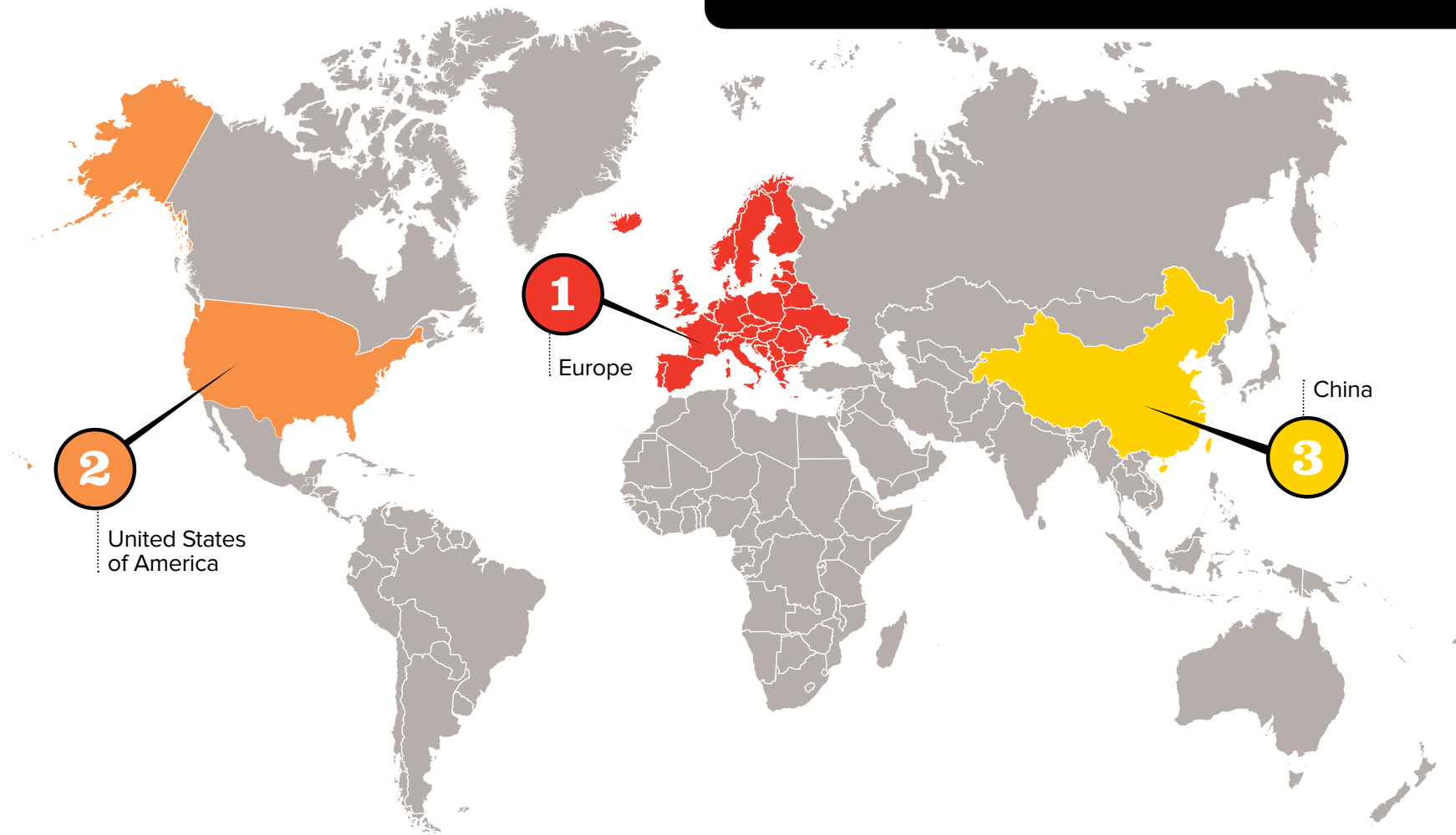
*Winston & Strawn, Partner, London
Managing Partner, Brussels*

What area of Antitrust/Competition law poses the greatest threat to your company today?

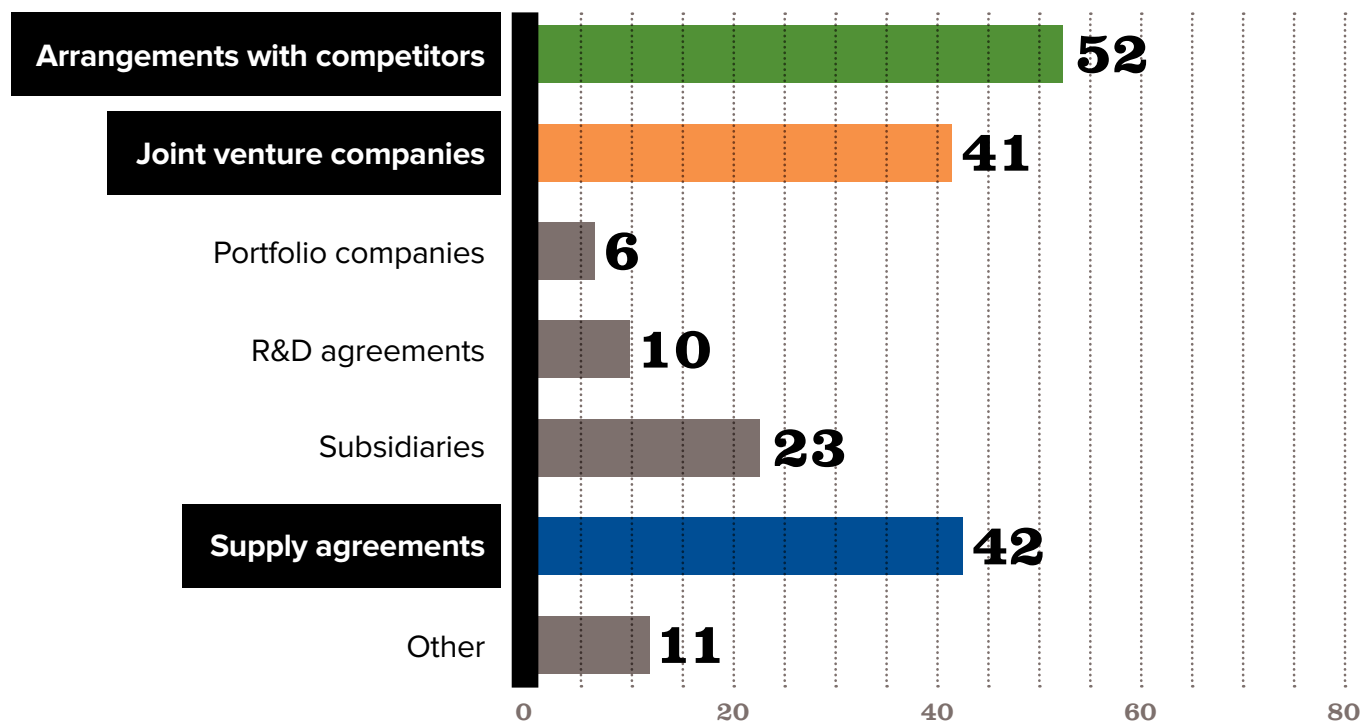


Which regions/countries pose the greatest risk to your company regarding Antitrust/Competition?

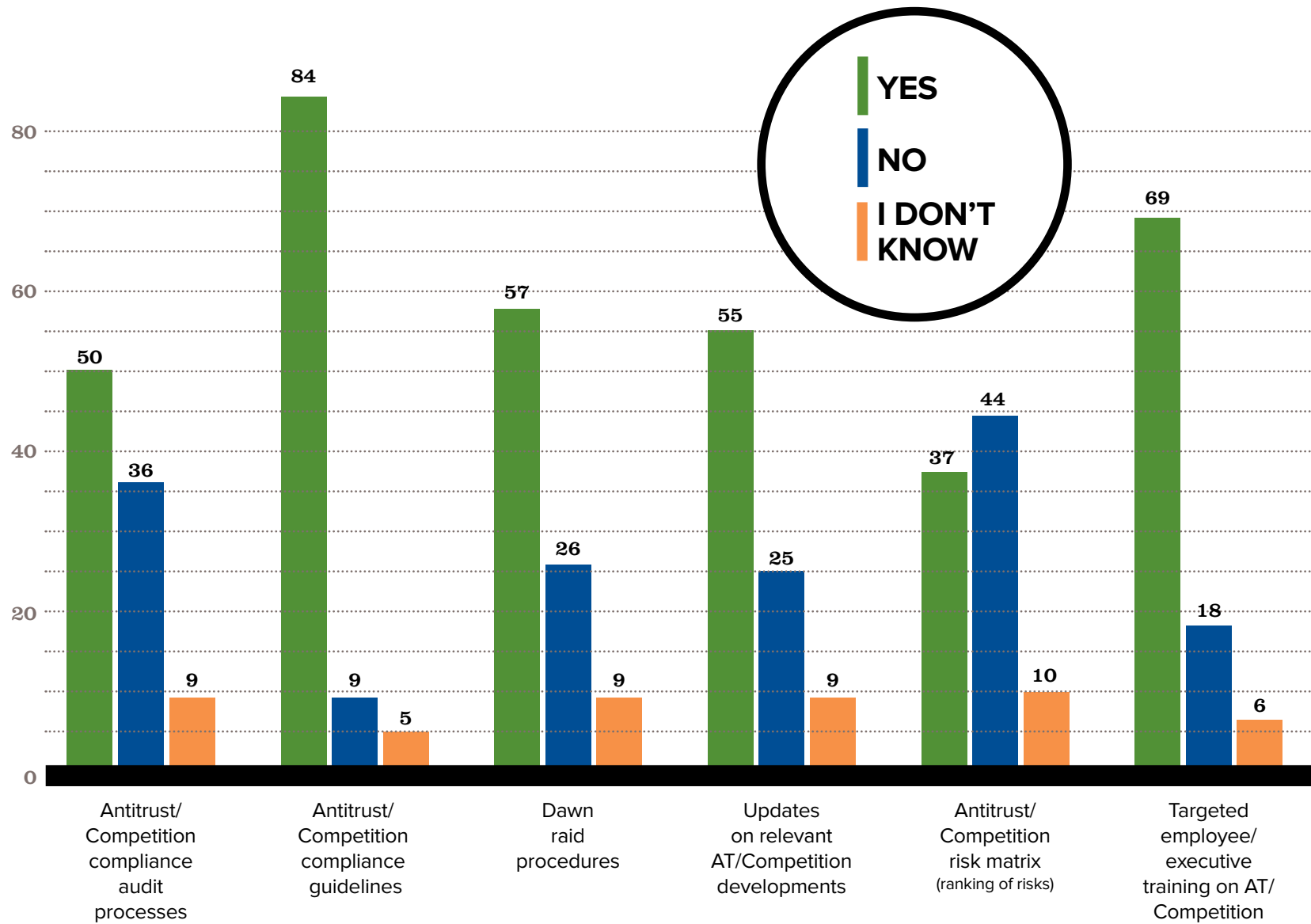
The Europe Region, including the United Kingdom, presents the biggest antitrust and competition concern among respondents, with the United States second. China is the only emerging market highlighted as an antitrust/competition risk.



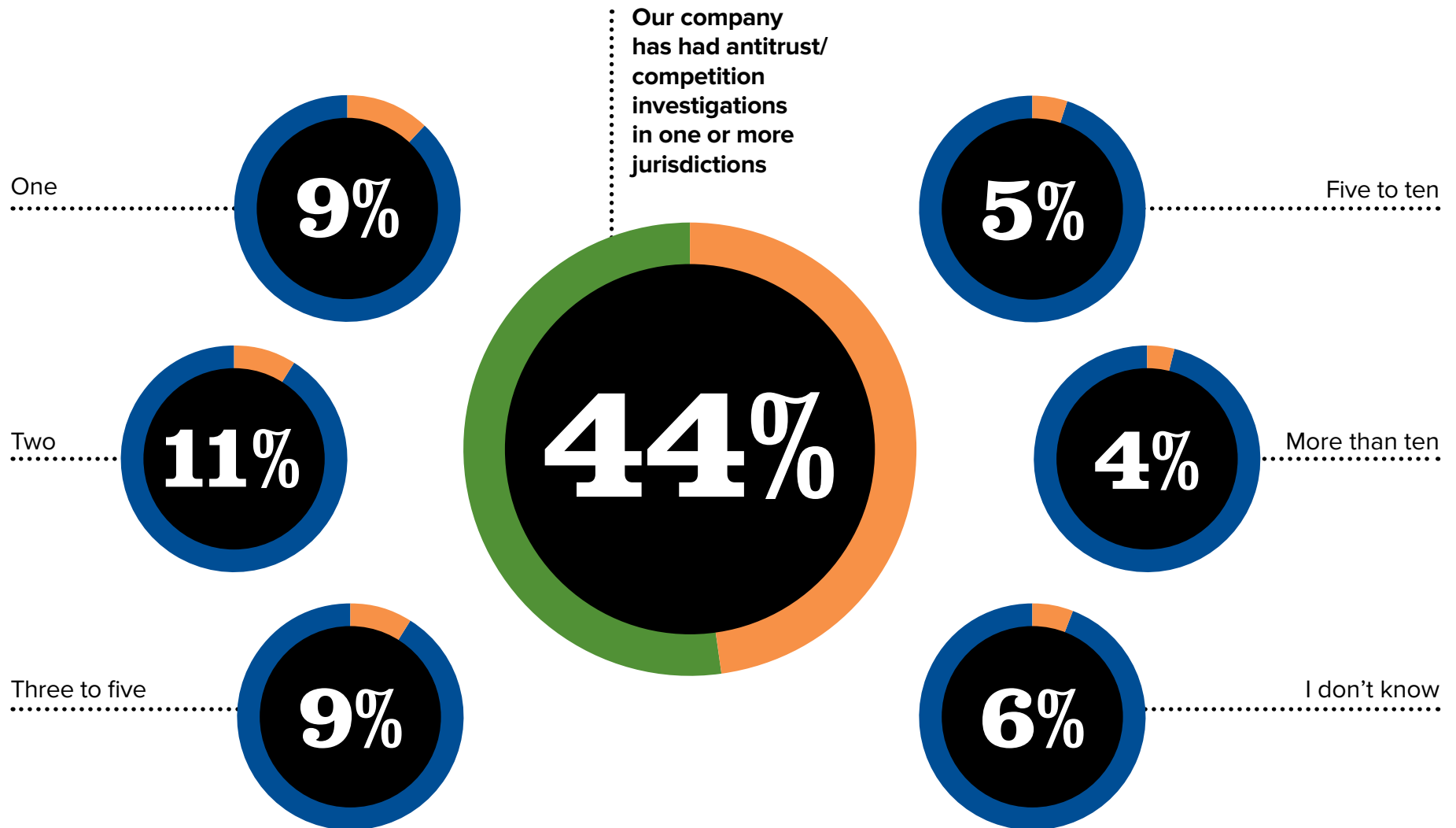
Which of the following two areas of your business are most susceptible to the threat of Antitrust/Competition inquiries?



Which of the following measures does your company have in place?



If your company has been the subject of an Antitrust/Competition investigation, in how many jurisdictions have investigations occurred?



Actions in-house counsel can take:

FINDINGS:

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1 Half of the respondents do not conduct competition compliance audits to ensure their compliance efforts actually are being applied in every-day operations.

.....

2 Many in-house counsel respondents do not rank antitrust and competition legal risks or use those rankings to guide their compliance efforts.

.....

3 Survey respondents focus more on Europe and North America for antitrust compliance.

.....

RECOMMENDATIONS:

-
- Incorporate an audit step into every important antitrust compliance procedure. Because of early discovery and disclosure leniency programs around the globe, there are substantial benefits to catching potential problems sooner rather than later. Depending on the company's specific needs and risks, audit steps may consist of periodic e-document review, discussions with key exposed personnel, or more elaborate audits.
 - To ensure that employees do not inadvertently (or deliberately) do anything that may hinder a government investigation and worsen the company's defense, dawn raid training is a vital part of a competition compliance program.
-

To decide where best to focus antitrust compliance efforts and audits, it is useful to identify the most risky areas for the specific company. The ranking process involves reviewing market share, geographic territories, exclusive arrangements, categories of products, and meetings where competitor contacts are most likely to take place (such as customer-organized supplier meetings, trade association functions, and situations in which customers are also competitors).

.....

Careful attention needs to be paid to developing antitrust regimes in high-growth countries, such as China. When seeking merger clearances, a lack of predictability or consistency can affect transaction timetables negatively and can throw into doubt the validity of key international supply agreements.

Anti-Bribery and Corruption

KEY HIGHLIGHTS

- Respondents identify sales as the division posing the greatest risk, and lower-to mid-level managers as the most susceptible employees to the risk of bribery or corruption.
- Asia-Pacific, by a strong margin, and the Middle East, followed by Africa, present the greatest bribery and corruption concerns.
- Respondents cite the locations where the company is doing business as the greatest bribery and corruption risk they face, followed by third parties acting on the company's behalf, and then rogue employees.
- Of the many strategies and processes used to reduce bribery and corruption risks, only 45% of respondents have implemented monitoring mechanisms to measure the effectiveness of their policies, and even fewer have risk matrices in place for each business in every location.
- While preventative measures are in place across all business operations for most, more than 20% of respondents implement such measures somewhat sporadically.
- When it comes to preventing bribery and corruption, 47% of respondents lack confidence in their companies' oversight of third parties. If on a score of 1–10, a score of 8–10 suggests a relatively high degree of comfort, 26% are confident about their companies' oversight of third parties; however, 46% rate their companies' oversight of third parties at a 6–7 level, suggesting mere adequacy, and 28% assign a value of only 1–5, suggesting they evaluate their companies' oversight of third parties as a significant business risk.

“Clients are becoming more aware that addressing bribery and corruption issues quickly and in a sophisticated fashion should be at the core of their business.”

Gilles Bigot

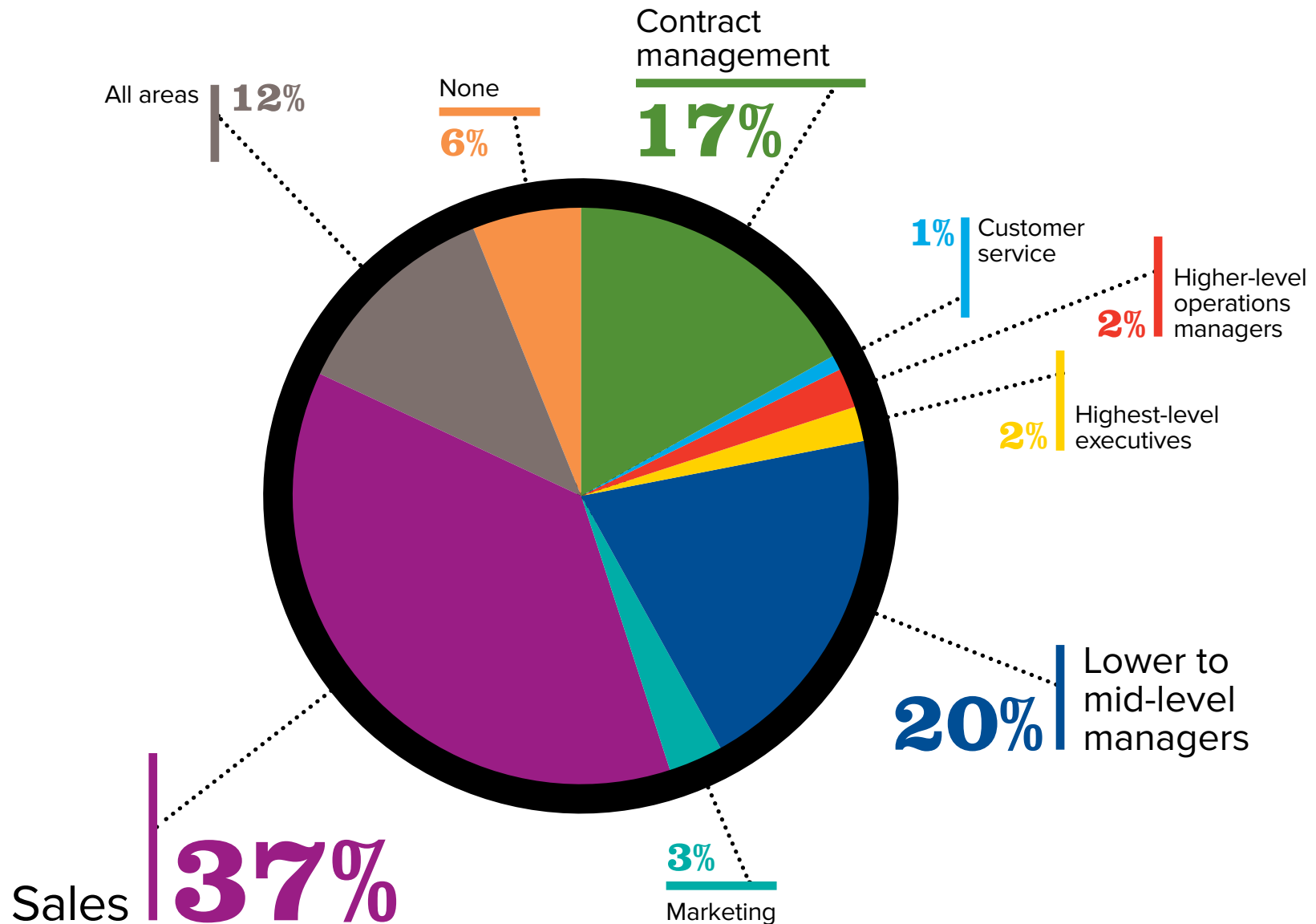
*Winston & Strawn,
Managing Partner, Paris*

“While China looms large as a compliance threat in the findings, this may reflect the current investment volume in China as much or more than any inherent risks of doing business in China compared to investing in other high-growth markets worldwide.”

David Hall-Jones

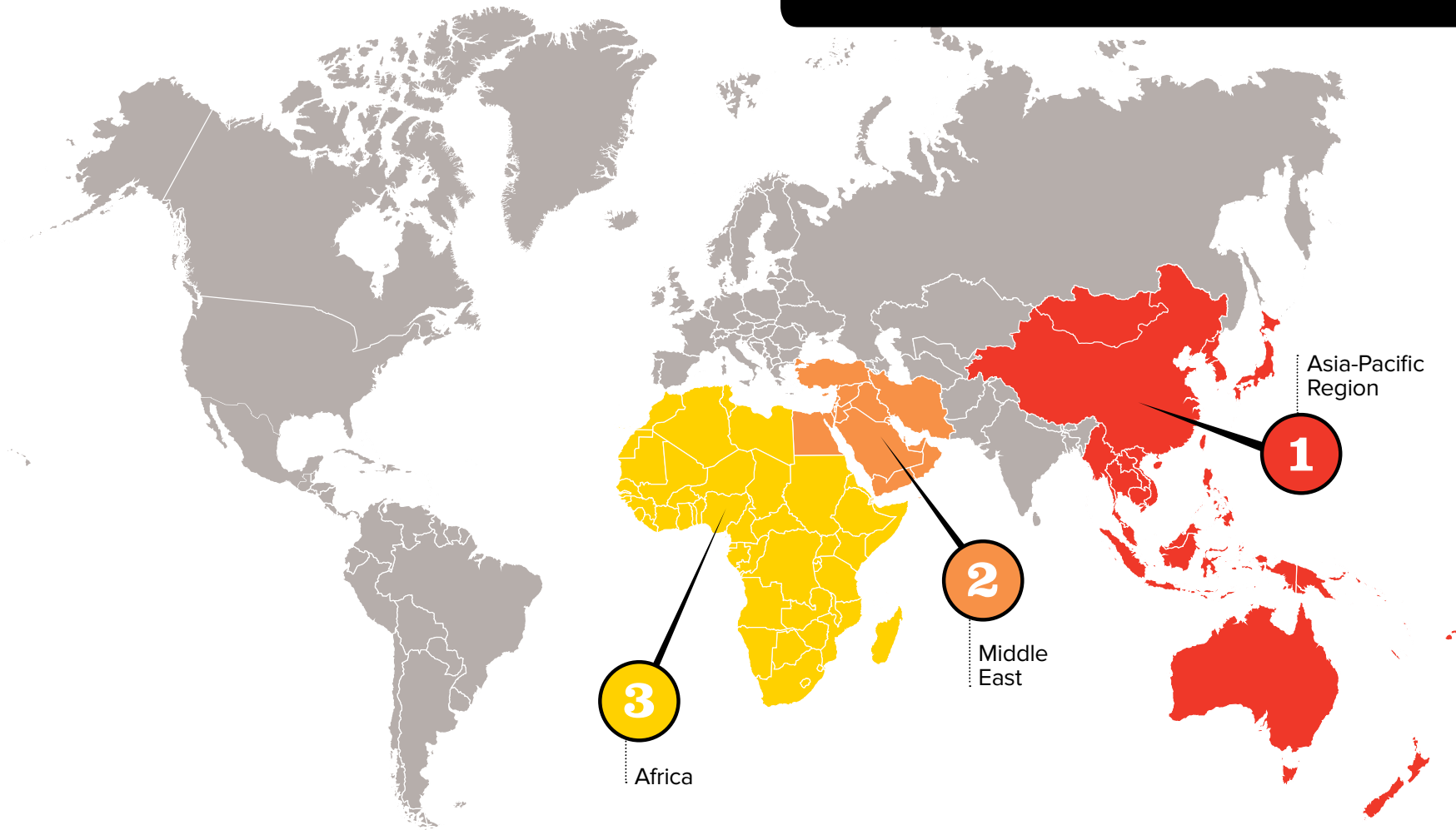
*Winston & Strawn,
Managing Partner, Asia*

Which part of your business do you consider most susceptible to the threat of bribery and corruption?

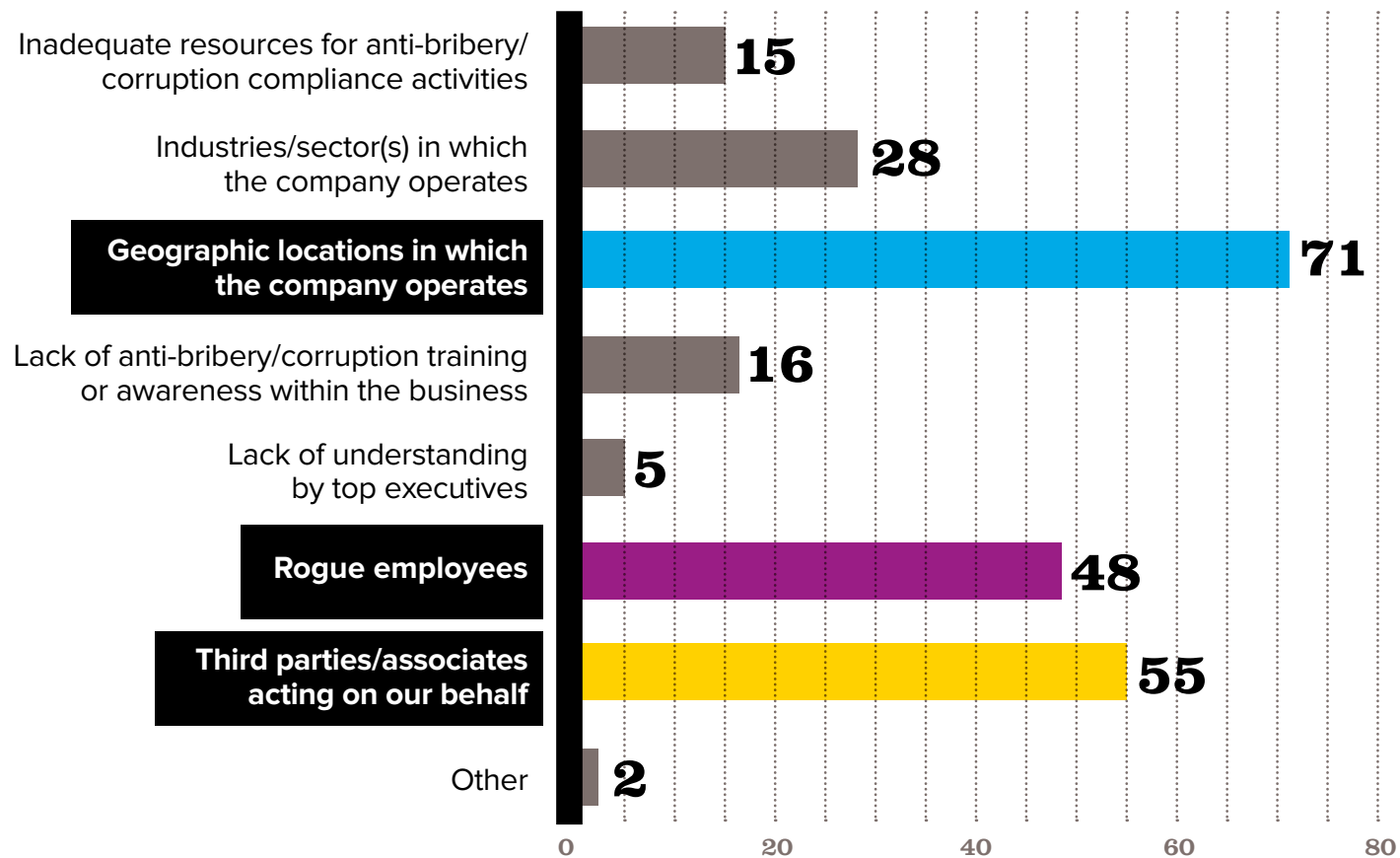


Which regions/countries pose the greatest corruption and bribery concern for your company?

Asia-Pacific is the region presenting the greatest corruption and bribery concern by a strong margin, followed by the Middle East and Africa.

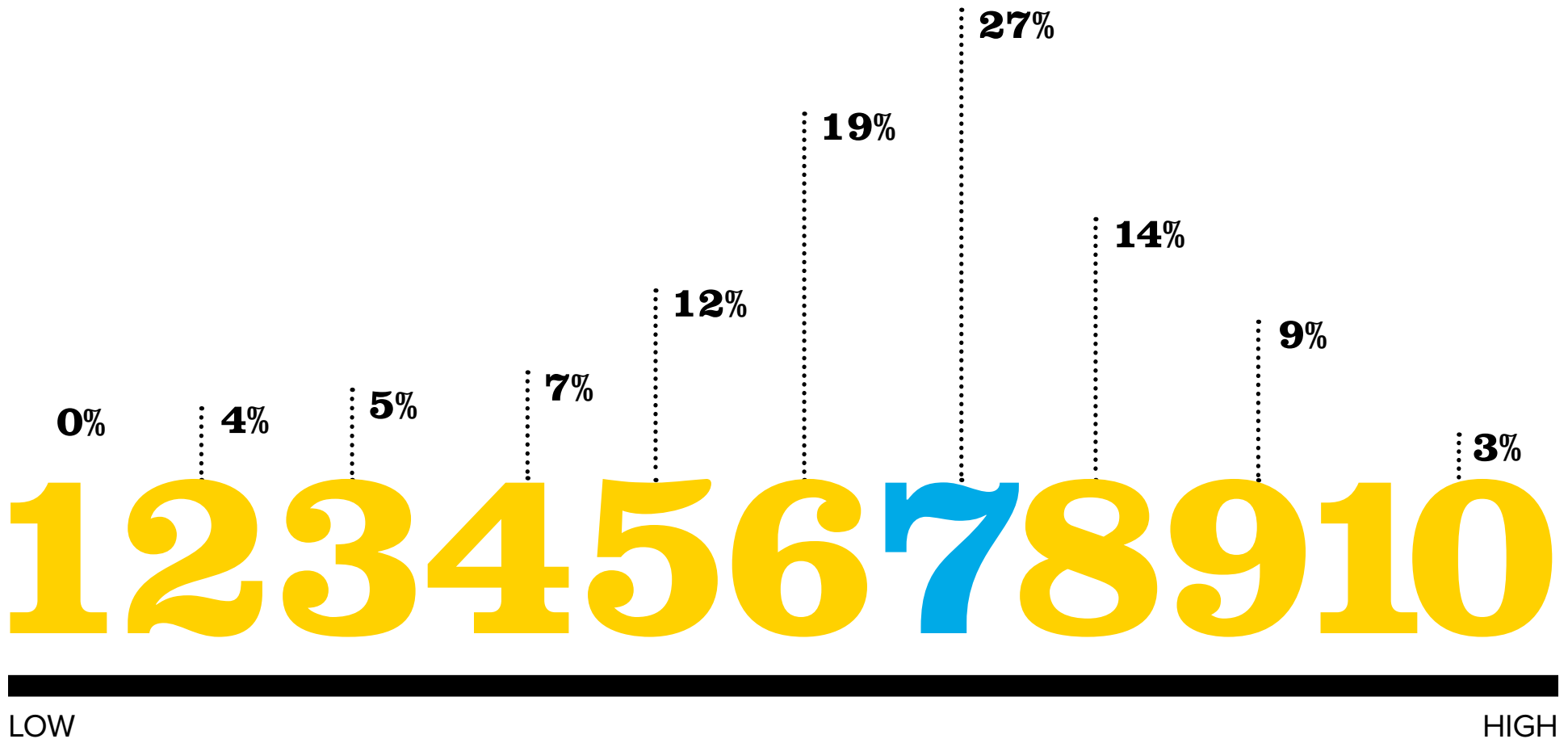


What do you consider to be the principal risks related to bribery and corruption in your company?

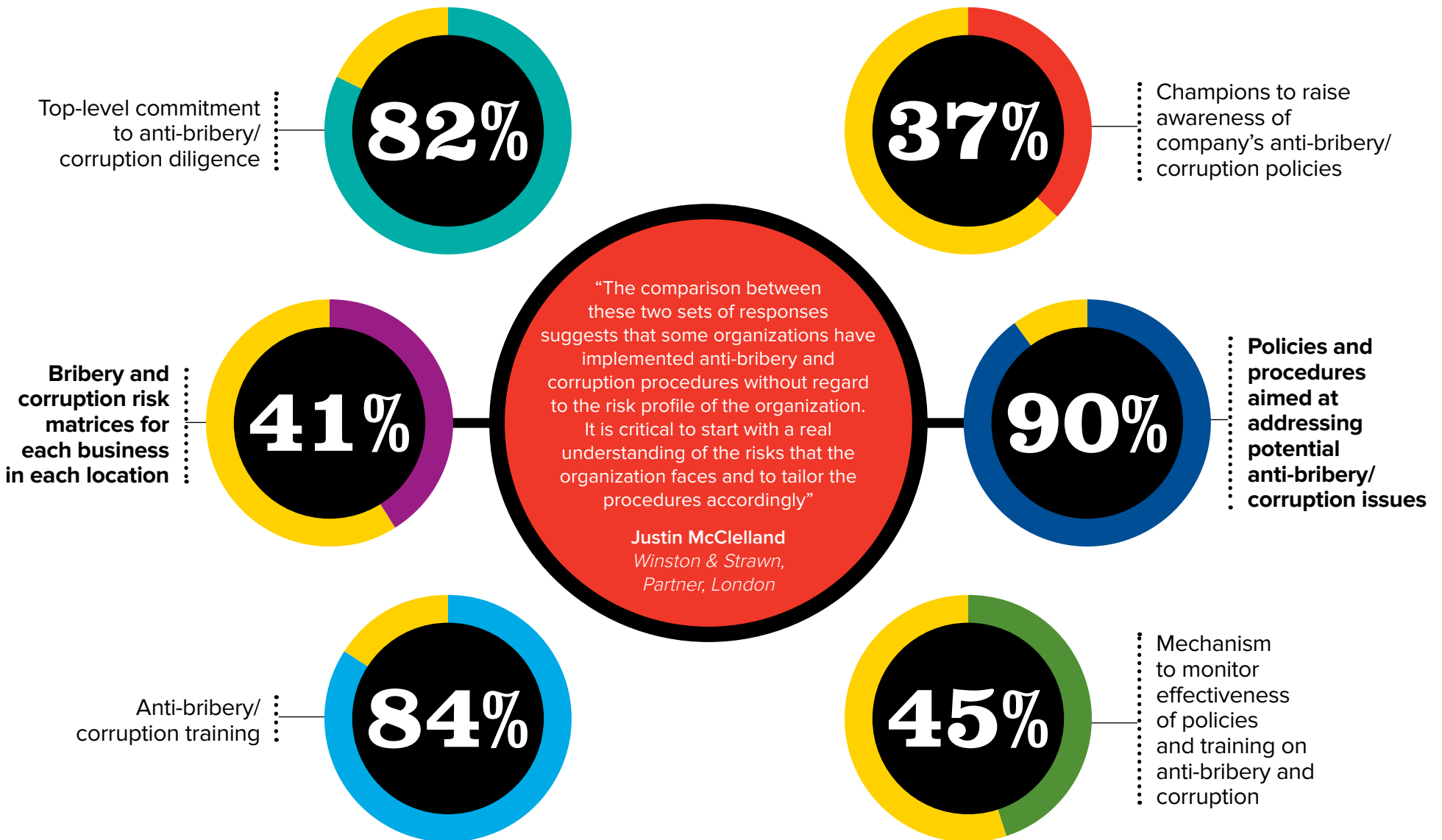


ANTI-BRIBERY AND CORRUPTION

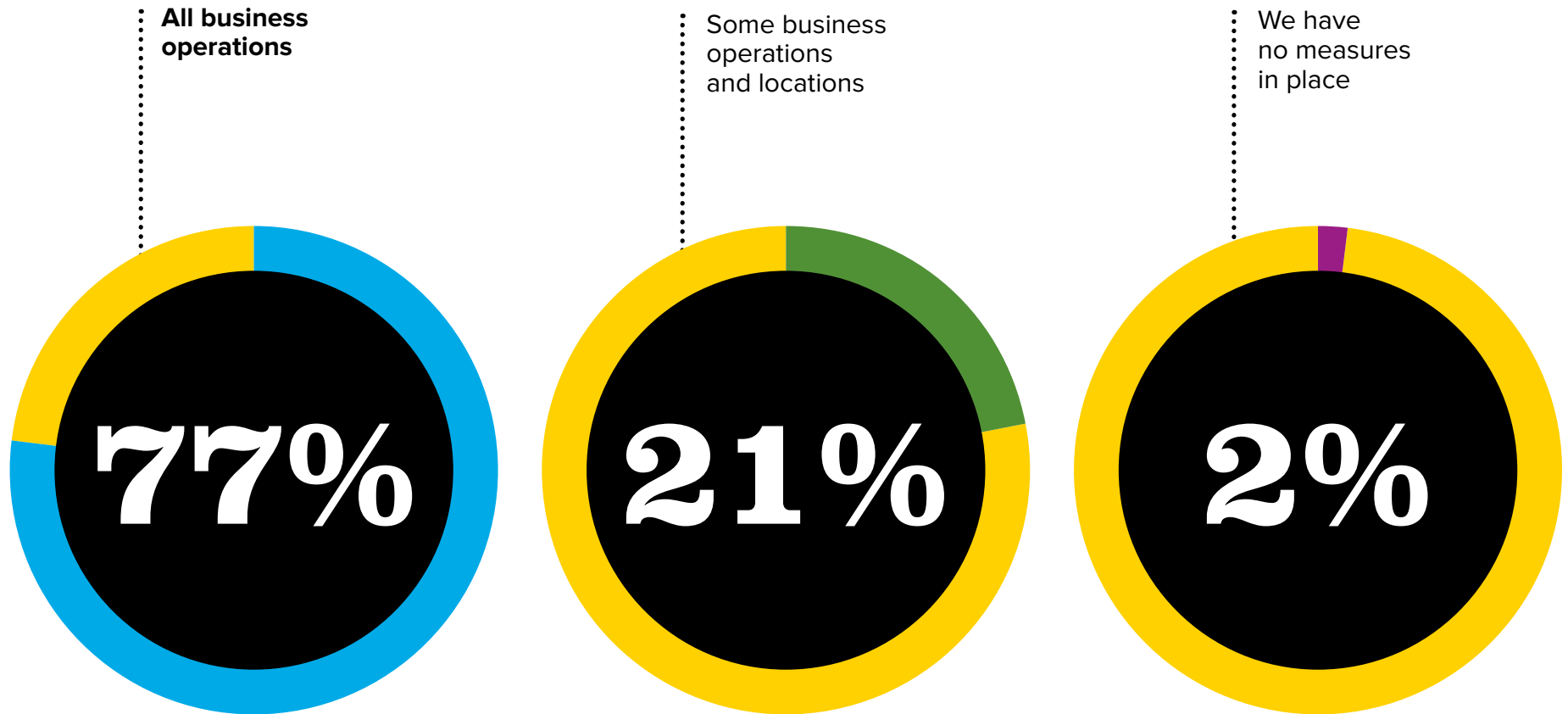
On a scale of 1 to 10, with 1 being lowest and 10 being highest, what is your level of comfort that your company has adequate policies, controls, and oversight regarding business relationships with third parties?



Which of the following measures does your company have in place today?



These measures are in place across...



Actions in-house counsel can take:

FINDINGS:

.....

1 Of the many measures used to reduce bribery and corruption risks, only 45% of respondents have implemented mechanisms to measure the effectiveness of their policies and training, and even fewer have risk matrices in place for each business in every location.

.....

2 Respondents cite the locations where their companies are doing business as the greatest bribery and corruption risk they face, followed by third parties acting on the companies' behalves, and rogue employees.

.....

3 While preventative measures are in place across all business operations for most, more than 20% of respondents implement such measures somewhat sporadically or not at all.

.....

4 When it comes to preventing bribery and corruption, many respondents lack confidence in their companies' oversight of third parties.

.....

RECOMMENDATIONS:

.....

A risk assessment is an essential starting point for developing an organization's anti-bribery and corruption policies and procedures. It enables alignment of procedures with the organization's particular risk profiles and will reduce the potential for an organization to implement disproportionately and unnecessarily burdensome procedures.

.....

.....

Anti-bribery and corruption will vary from one location to the next. An organization still can apply a consistent approach across a line of business or region but will need to enhance that approach for the locations or issues representing the greatest risk. Bespoke procedures may be, but will not necessarily be, required

.....

.....

An audit mechanism incorporated into anti-bribery and corruption compliance helps measure success in reaching objectives of the policies and procedures. Aligning processes with those used for other audit efforts within the business (for example, those established to address antitrust and competition risks) helps achieve a coherent and comprehensive company approach to identifying and addressing business risk.

.....

.....

Training is critical and should extend beyond internal procedures to cover third-party participants in the venture. Incorporate provisions in contractual arrangements with counterparties to set the correct tone for the relationship and to allow for appropriate oversight

.....

Cross-Border Joint Ventures and Strategic Alliances in Emerging and High-Growth Markets

KEY HIGHLIGHTS

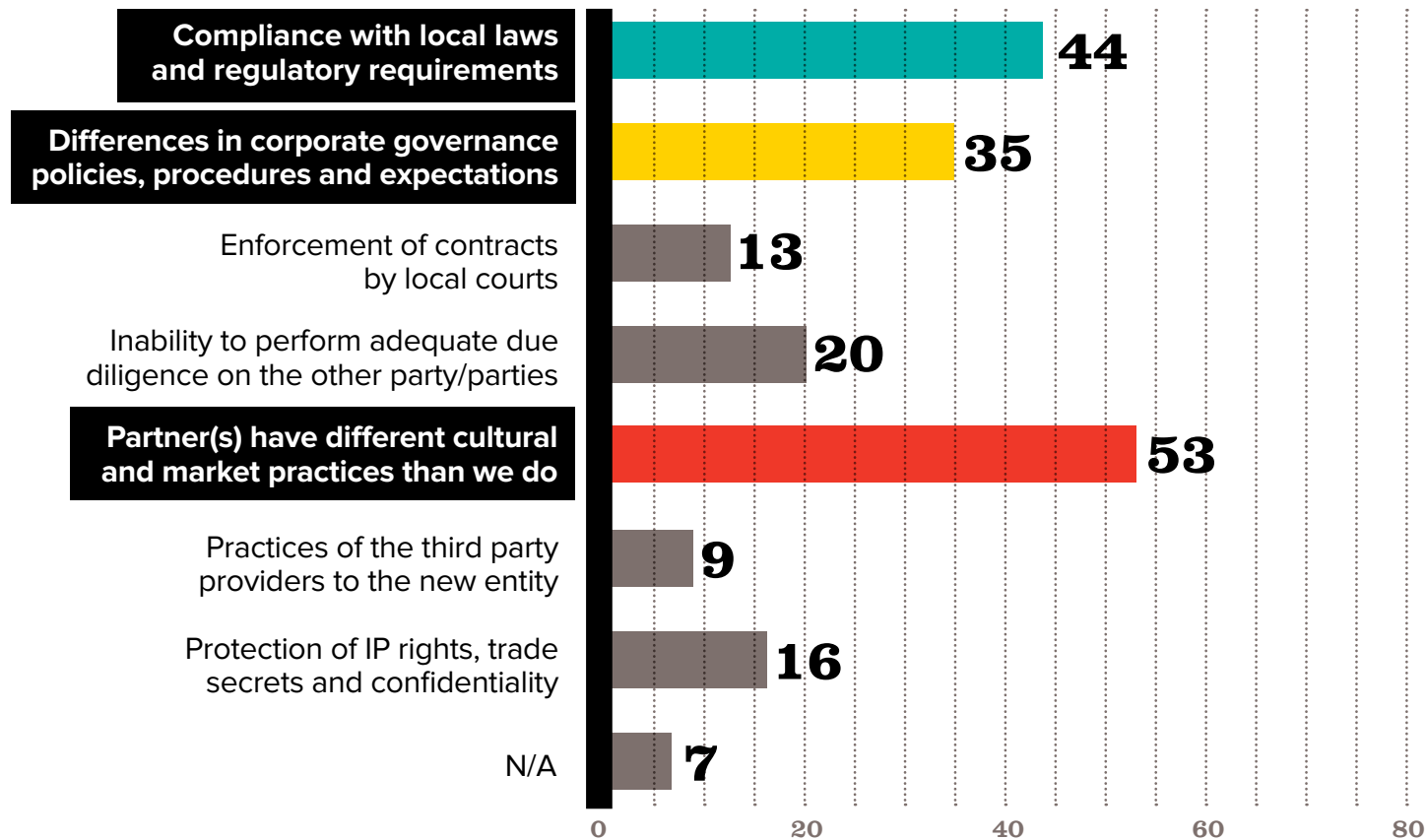
- The two greatest risks for cross-border JVs and alliances in emerging and high-growth markets are the differing cultural and market practices of partners and understanding the local legal and regulatory regimes.
- Involving in-house counsel in due diligence from the outset and adopting cross-border-sensitive governance policies topped the list of ways to reduce these risks.
- Companies engaged in cross-border JVs and strategic alliances deem the Asia-Pacific Region as posing the greatest risk for legal problems. China was identified as the riskiest markets for cross-border joint ventures and strategic alliances by some margin, followed by Russia and India, with Africa and Latin America trailing behind.
- 60% of those surveyed are less concerned about the risks associated with cross-border JVs and strategic alliances in mature markets.

“The challenge for all cross-border ventures is to adhere to applicable regulatory regimes while addressing the realities and risks of doing business in the local market. Governance and operational issues take great importance in cross-border joint ventures and strategic alliances because the cultural and market practices of the involved parties may be very different. While difficult at the start, the issues must be clarified for the venture to proceed effectively.”

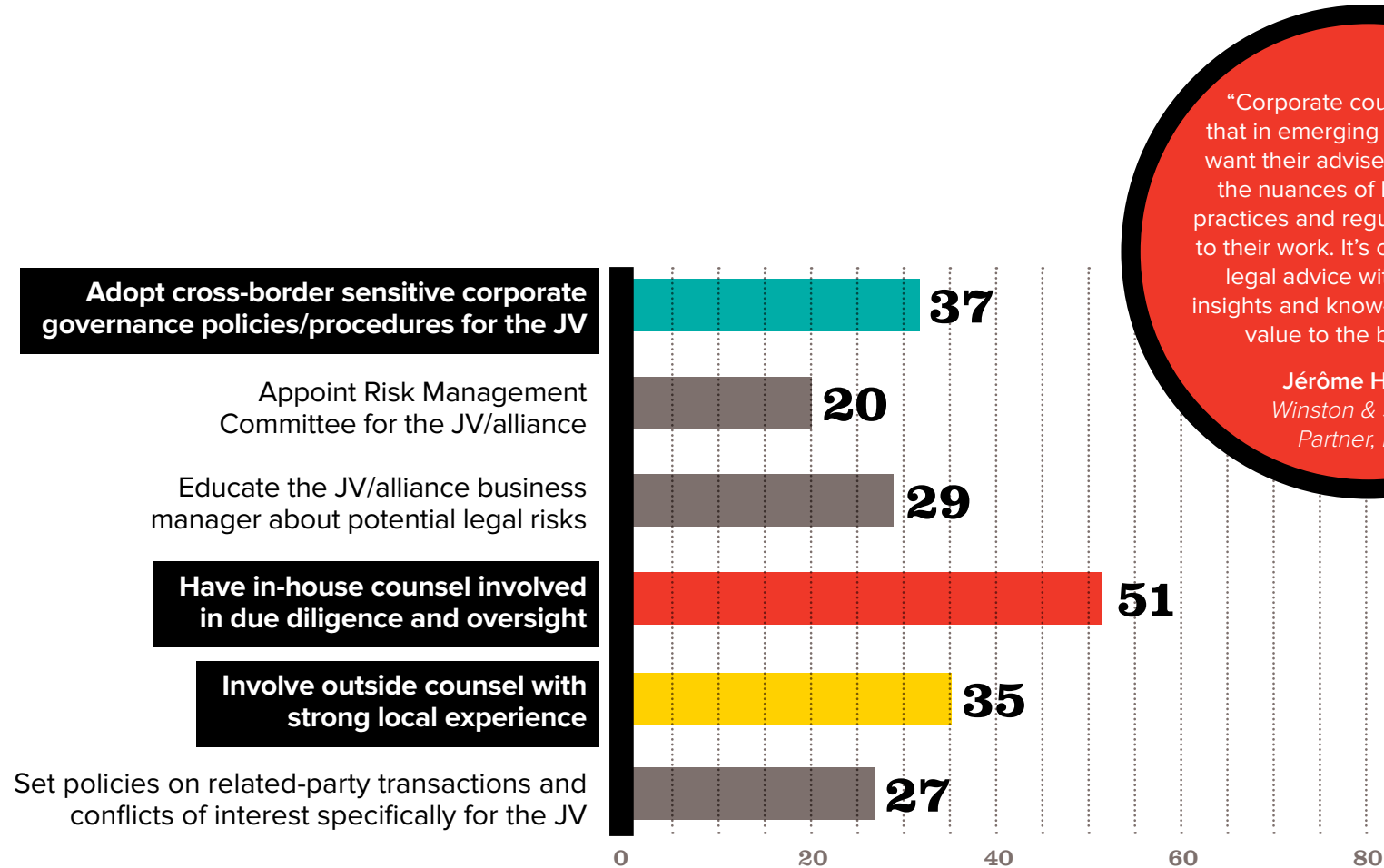
Zoë Ashcroft

Winston & Strawn, Partner, London

In which areas of cross-border JVs and alliances in emerging and high-growth markets do you find legal risks most often arise?



What do you find are the best ways to avoid legal problems with cross-border JVs and alliances in emerging/high-growth markets?

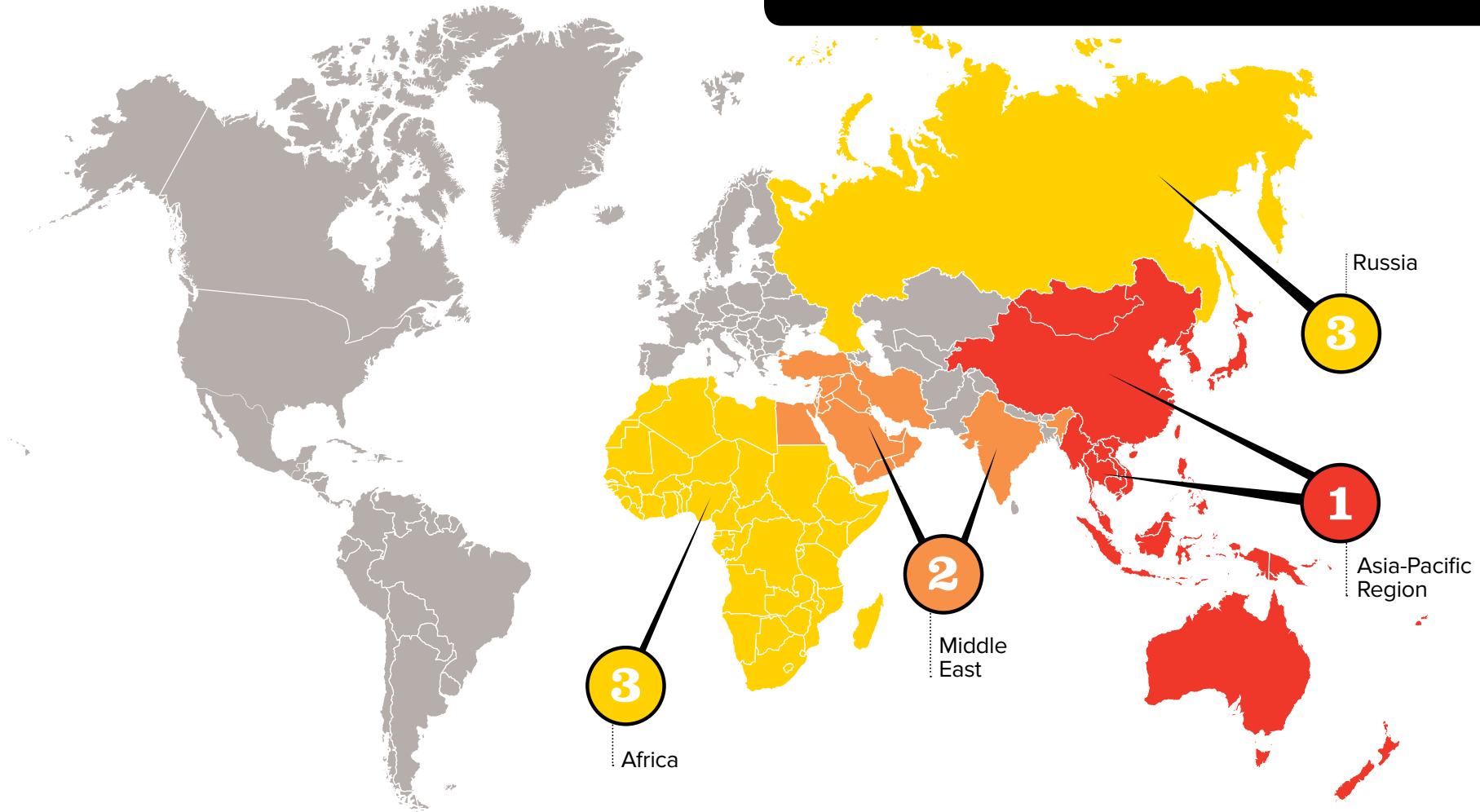


“Corporate counsel tell us that in emerging markets, they want their advisers to connect the nuances of local market practices and regulatory context to their work. It’s clear that strict legal advice without those insights and know-how is of little value to the business.”

Jérôme Herbert
*Winston & Strawn,
Partner, Paris*

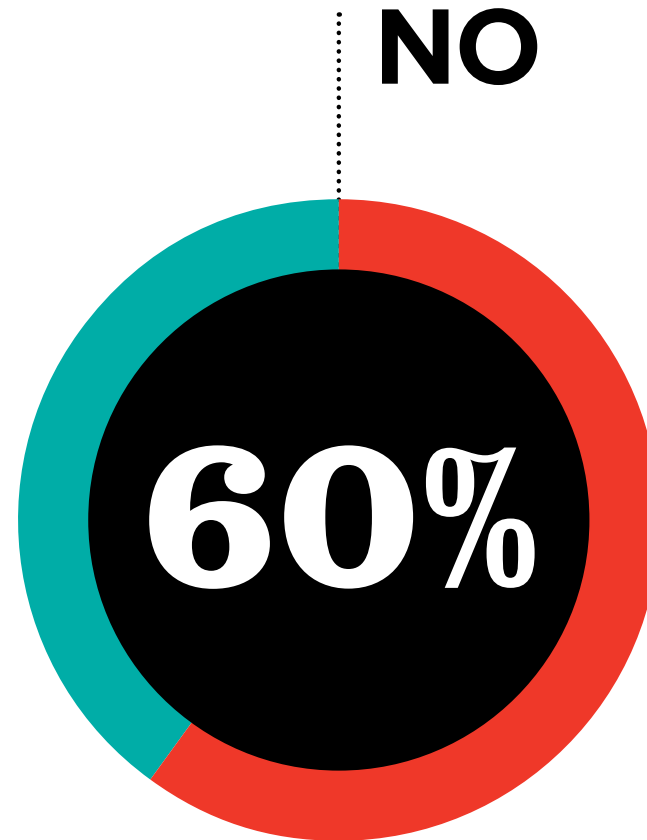
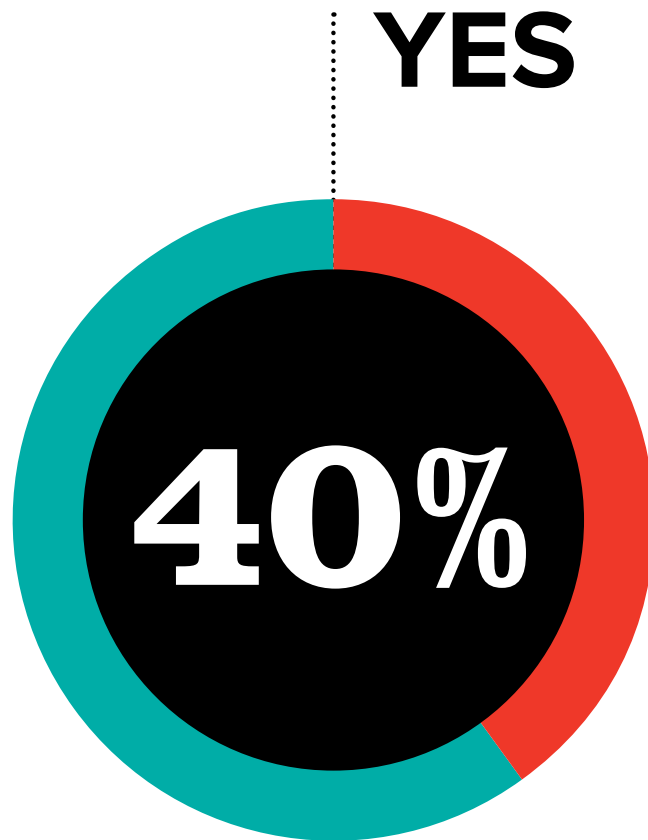
In which of the following regions/countries are you most concerned about legal risks of cross-border JVs and strategic alliances?

Legal risks from cross-border JVs and alliances are viewed as most significant in the Asia-Pacific Region. The Middle East is a distant second in responses, with Africa trailing farther behind.



Do cross-border JVs and strategic alliances in mature markets present similar challenges to those mentioned above?

A few respondents told us that while the risk of joint ventures in emerging markets in the short to mid-term is far higher, they consider a shared—rather than wholly owned—business venture a higher risk in any market.



Actions in-house counsel can take:

FINDINGS:

.....

1 The greatest risks posed to cross-border ventures are the differing cultural and market practices of the partners, and the challenge of understanding and complying with local laws and regulations.

.....

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2 Involving in-house counsel from the outset in both due diligence and oversight of governance policies can be one of the most effective ways to reduce risks in cross-border joint ventures and strategic alliances.

.....

.....

3 Adopting cross-border sensitive governance policies for the new venture is key to reducing risks associated with cross-border business structures.

.....

RECOMMENDATIONS:

-
- Developing a risk matrix at the outset of any cross-border joint venture or alliance can be helpful for flagging and tracking key areas for concern. Each venture will be different due to the partners' cultures and local market practices.
 - Consider early what your most important rights are and decide where you would want to seek adjudication if rights or remedies need to be enforced. Neutral jurisdictions which do not give real or perceived 'home team' geographic advantages can be helpful here. Confidentiality concerns may favor arbitration or mediation as the preferred dispute-resolution tool.
 - Take advantage of outside providers with local market experience to bridge the jurisdictional divide. Knowledge of local practice, of applicable dispute-resolution systems and regulatory regimes, as well as sensitivity to cultural nuances can prove a tremendous business advantage.
-

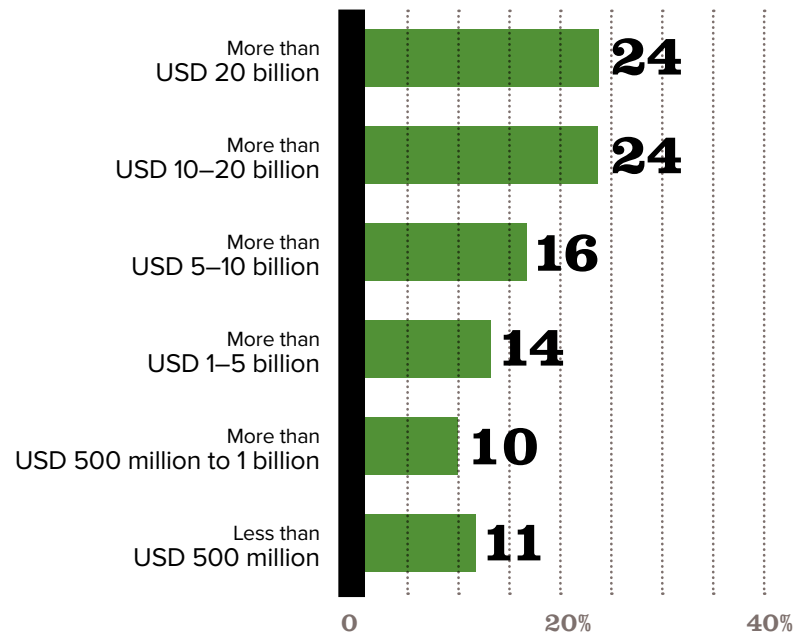
Corporate counsel can demonstrate the value they add by providing effective tools for addressing the risks associated with these types of ventures, such as due diligence checklists and risk matrices. Practical training for internal business clients not only helps raise awareness about common risk areas, but also encourages close collaboration with in-house counsel in developing and structuring the cross-border joint venture.

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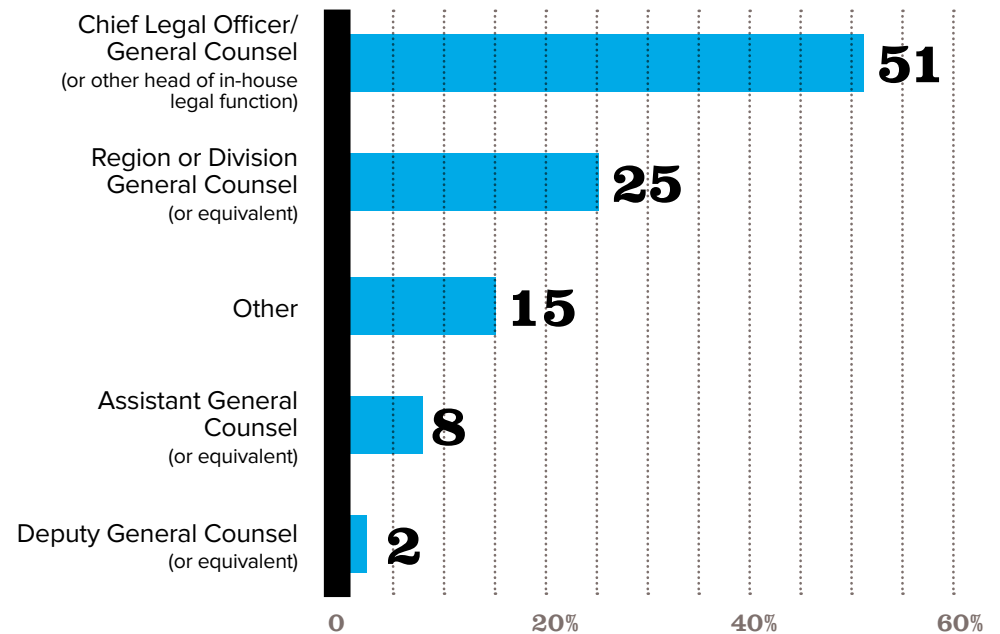
Bespoke policies are essential when doing business in emerging markets where commercial cultures and legal and regulatory environments can be very different. "One size" does not fit all. The combination of in-house lawyers' and outside counsel's experience can prevent the kinds of operating and governance problems that commonly arise with new ventures.

DEMOGRAPHICS OF SURVEY RESPONDENTS

Your parent company's annual revenues/turnover for the most recent fiscal year are:

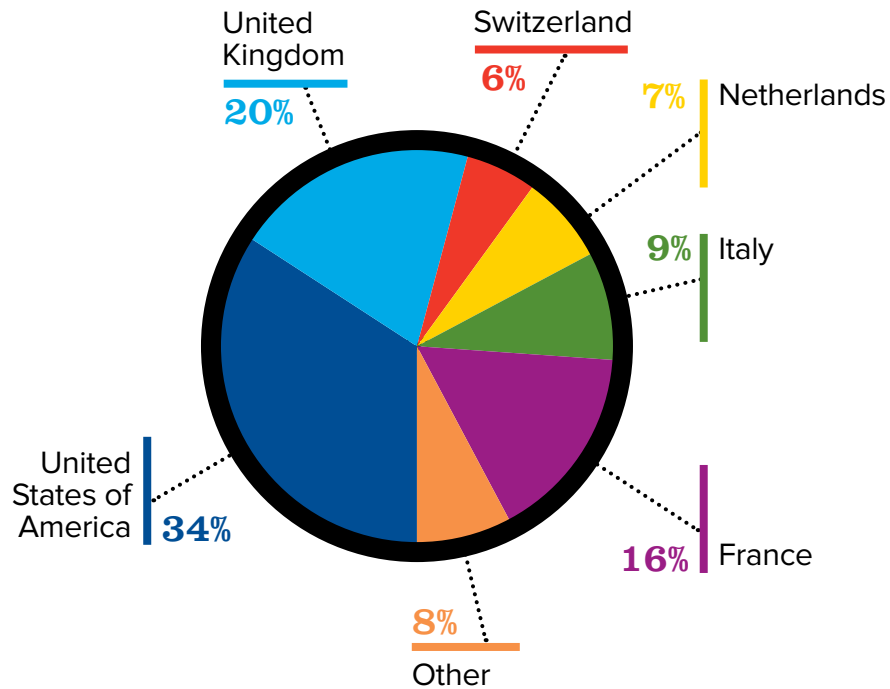


Check the title that best corresponds to yours:

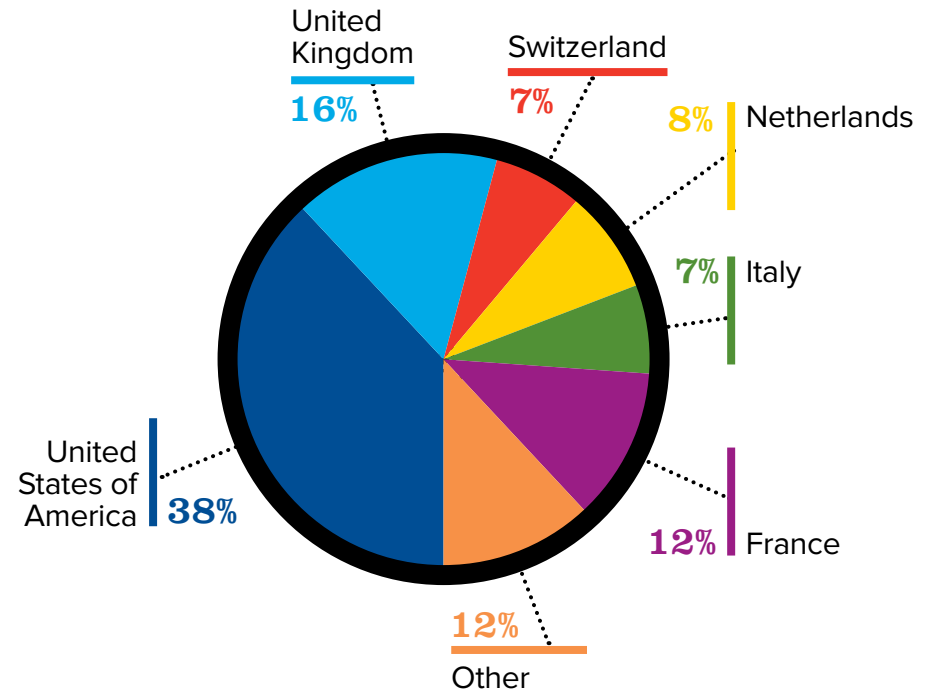


DEMOGRAPHICS OF SURVEY RESPONDENTS

In which country are you based?



In which country is your organization's headquarters located?



SURVEY METHODOLOGY

The survey was developed by Winston & Strawn partners resident in the United States, the United Kingdom, France, Switzerland, Belgium, and Asia. A number of senior counsel of major multinational corporations and institutions in Europe and the United States provided input, including questions that were included in the final questionnaire. We then produced the survey on a leading online survey platform.

In May 2013 invitations to participate in the survey were sent by email to senior corporate counsel across Europe and the United States. The invitations included a link to the online questionnaire, and to ensure the complete confidentiality of the respondents, responses could not be linked to individual participants.

Specific questions in the survey enabled us to look at responses by self-defined characteristics of individual respondents (e.g., industry of decision maker's company, country where based, title, etc.). Responses were received from counsel in 12 countries.

Because not every respondent answered every question, not all responses to every question total 100%.

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Our firm serves the needs of enterprises of all types and sizes, in both the private and the public sectors. The exceptional depth and geographic reach of our resources enable Winston & Strawn to manage virtually every type of business-related legal issue.

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