



While You Were Sleeping:  
Insights about the Realities of Ethics &  
Compliance in Asia with a Focus on  
Bribery and Corruption

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1. **Bribery & Corruption in Asia**
2. **Enforcement Actions**
3. **Anti-Corruption Laws & Regulations**
4. **Key Considerations for Multinational Companies Operating in Asia**



## 1. Bribery & Corruption in Asia

## Asia



- Asia is the largest and most populous continent in the world
- 48 countries comprise of Asia
- Over 2,000+ different spoken languages
- Top languages include: Chinese, Hindi (India), Indonesian, Japanese, Tagalog (Philippines), Korean, Vietnamese, Thai, and Malay.
- Every country has a different set of laws and customs.
- Every government has a different set of priorities.



\* For the purposes of this presentation, we only cover a select few countries in East Asia, Southeast Asia, and South Asia.

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## Corruption Perceptions Index



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## Corruption Perceptions Index



Country	CPI Score 2017	Rank	Standard Error	Lower CI	Upper CI	number of sources
Singapore	84	6	2.26	80	88	9
Hong Kong	77	13	2.37	73	81	7
Japan	73	20	2.66	69	77	9
Bhutan	67	26	1.83	64	70	5
Taiwan	63	29	3.28	58	68	8
Brunei Darussalam	62	32	8.72	48	76	3
Korea, South	54	51	2.24	50	58	10
Malaysia	47	62	2.67	43	51	9
Vanuatu	43	71	3.93	37	49	3
China	41	77	1.96	38	44	9
India	40	81	2.16	36	44	9
Solomon Islands	39	85	3.71	33	45	3
Sri Lanka	38	91	1.82	35	41	7
Timor-Leste	38	91	7.5	26	50	3
Indonesia	37	96	3.12	32	42	9
Thailand	37	96	2.03	34	40	9
Mongolia	36	103	1.4	34	38	9
Vietnam	35	107	2.78	30	40	8
Philippines	34	111	1.9	31	37	9
Maldives	33	112	1.71	30	36	3
Pakistan	32	117	2.11	29	35	8
Nepal	31	122	2	28	34	6
Myanmar	30	130	3.91	24	36	7
Laos	29	135	5.89	19	39	5
Papua New Guinea	29	135	2.55	25	33	6
Bangladesh	28	143	3.19	23	33	8
Cambodia	21	161	2.43	17	25	8
Korea, North	17	171	4.18	10	24	4

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## Local Perspective China's "Tigers and Flies"



"We must uphold the fighting of tigers and flies at the same time, resolutely investigating law-breaking cases of leading officials and also earnestly resolving the unhealthy tendencies and corruption problems which happen all around people"

- Xi Jinping, President of the People's Republic of China



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## Local Perspective India: "Black Money"



"Demonetization was a major step to fight black money and corruption. The people had asked me to fight graft.... We took a key step to help honest citizen to defeat the menace of graft."

- Narendra Modi, Prime Minister of India



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## Local Perspective South Korea: Presidential Scandal



"The defendant abused her presidential power entrusted by the people, and as a result, brought massive chaos to the order of state affairs and led to the impeachment of the president, which was unprecedented."

- Judge Kim Se-yoon of the Seoul Central District Court Criminal Division, speaking in regards to former President of South Korea, Park Geun-hye, who was sentenced to 24 years in jail in connection with corruption charges.



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## 2. Enforcement Actions

### US Enforcement Actions Affecting Asia Markets (2017-2018)

- 57 enforcement actions by the US Department of Justice and/or Securities Exchange Commission in connection with US Foreign Corrupt Practices Act violations for 2017-2018 to date.
- Out of those 57 enforcement actions, 19 involved an Asian country, or 33% of all US enforcement actions during the time period.
- Approximately \$1.1+ billion dollars in monetary sanctions were paid by companies and individuals to US regulators in connection with FCPA violations that included at least one Asian country. This is slightly more than 50% of the total of approximately \$2+ billion dollars in monetary sanctions by US regulators to date.
- There are currently 47 reported on-going FCPA investigations by US regulators. Of these, we understand that 13 concern conduct involving at least one Asian country. These investigations involve both companies and individuals.

## Example US Enforcement Actions Affecting Asia Markets (2017-2018)



- 2018: A major bank agreed to pay \$40+ million criminal penalty to the US Department of Justice for corrupt hiring scheme that violated the US Foreign Corrupt Practices Act.
- 2017: A medical manufacturer agreed to pay \$10+ million to settle charges with the US Securities Exchange Commission that it committed accounting fraud through its subsidiaries to meet revenue targets and made improper payments to foreign officials to increase sales in certain countries.
- 2017: A major manufacturer and distributor of food and beverages agreed to pay \$10+ million to settle charges of violating the internal controls and books-and-records provisions of the US Foreign Corrupt Practices Act.
- 2017: An international telecommunications company entered into a foreign bribery resolution and agreed to pay a combined total penalty of \$950+ million to resolve charges arising out of a scheme to pay bribes in Uzbekistan.

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## Local Enforcement Actions



Vietnam's Ministry of Health ordered a review of purchases of medical equipment manufactured by a major medical devices company, following its \$50+ million settlement with US authorities, which included allegations of bribery in Vietnam. (2014)



An account executive of a major technology communications firm was sentenced to 2 years in prison and fined approx. \$40,000 after being convicted by a Malaysia court for bribing a procurement official at a state-owned company. (2013)






A governor of the Tourism Authority in Thailand was sentenced to 50 years in prison for accepting \$1.8 million of bribes from U.S. filmmakers in connection with contracts for a major film festival in Thailand. (2017)

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## Local Enforcement Actions (cont'd)



	An Indonesia court convicted two individuals for bribery offenses and sentenced them to jail for three and five years as part of an investigation into a global chemicals company. (2015)
	Macau gambling tycoon faces one to five years in prison for allegedly bribing Philippines government officials \$1 million in order to release detained Chinese nationals who were working illegally at a casino resort. (2017)
	Vice chairman of global telecommunications company was arrested and jailed on charges of paying \$35+ million in bribes to former President Park Geun-hye's confidante, Choi Soon-sil. (2017)

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## Trending: Coordinated Enforcement Actions



**Increased trend of multiple enforcement actions from different regulatory authorities against the same company in relation to the same or similar conduct.**

- Regulatory authorities are increasingly sharing information with one another.
- Coordinated enforcement actions where different regulatory authorities tackle different parts of the conduct.
- Potential fines and penalties from more than one regulator and/or country.



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- **2017:** Multinational shipping company agreed to pay \$400 million in global penalties to resolve bribery probes by United States, Brazil, and Singapore authorities.
- **2016:** Major aerospace and energy conglomerate agreed to \$800 million global resolution with authorities in the United States, the United Kingdom and Brazil for long-running scheme to bribe government officials in exchange for government contracts including those in Thailand, Kazakhstan, China, India, Indonesia, and Malaysia. (2016)
- **2016:** Multinational pharmaceutical company agreed to pay over \$400 million following a court conviction for violating Chinese bribery laws. Top executive in China deported. In subsequent proceedings, company agreed to pay \$20 million to US regulators for FCPA violations in connection with China conduct during the same period.
- **2016:** Multinational food and beverage company agreed to pay \$6 million to settle charges that it violated the Foreign Corrupt Practices Act and chilled a whistleblower who reported the misconduct.



### 3. Anti-Corruption Laws & Regulations

## Local Anti-Bribery Laws and Regulations



- While every country's laws may differ, the concept of prohibiting someone from offering something of value in exchange for an improper favor or business advantage is generally consistent across all jurisdictions.
- When reviewing relevant laws and regulations in the local country, consider:
  - Who do the laws apply to?
  - Is this law extraterritorial?
  - What type of conduct does it cover?
  - Are there civil and/or criminal charges?
  - What are the potential consequences for violating the law or regulation?
  - Who are the relevant regulatory authorities?
  - What are some examples of recent enforcement actions?

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## Anti-Bribery Laws and Regulations



- Some Important Laws to Know
  - Chinese Criminal Law and Anti-Unfair Competition Law
  - Hong Kong Prevention of Bribery Ordinance
  - South Korea Criminal Code including various Acts related to official corruption
  - India's Prevention of Corruption Act
  - Indonesia's Eradication of Criminal Acts of Corruption
  - Vietnam's Anti-Corruption Law and Penal Codes
  - Thailand's Organic Act on Counter Corruption B.E. 2542 and Penal Codes
  - United States Foreign Corrupt Practices Act \*
  - United Kingdom Bribery Act \*

*\* Not Asian laws but heavily enforced overseas.*

- Relevant laws and regulations vary by country
  - There may be multiple relevant laws and/or regulations for any particular potential misconduct.
  - Regulatory enforcement trends evolve over time

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## 4. Key Considerations for Multinational Companies Operating in Asia

### Impact on Businesses Operating in Asia



#### Trends Across Asia:

- Increased focus on corporate liability;
  - Self-reporting to government bodies;
  - Increased extra territorial application;
  - Multi-jurisdictional approach to risk mitigation
- 
- While increased compliance obligations *should* result in additional transparency and enhanced business practices, the region is uneven in its commitment to fighting corruption.
  - Even though more Asian countries are regulating corruption, and even though companies active in the region are adopting stronger controls, fraudulent practices in the region appear to be on the rise, though partially attributable to increased reporting and more stringent laws.

## The Diversity and Complexity of Asia



- No common language across the region
- Highly diverse -- no common culture, no common religion
- Deep history and strong cultural ties
- Distance and travel times are significant
- Diverse forms of governments from dictatorships to democracies
- Different ways of communicating and understanding
- Socio-political dynamics vastly different from region to region



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## Attorney-Client Privilege in Asia



### ▪ **Civil law countries do not recognize legal privilege:**

- China
- Japan
- Korea
- Indonesia
- Thailand
- Vietnam

### ▪ **Common law jurisdictions recognize privilege:**

- Hong Kong
- Singapore
- India
- Malaysia
- Philippines



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## Common Compliance Issues



- **Kickbacks**

- Very common in Asia
- “Just a part of doing business”

- **Gift-giving culture**

- Gifts, travel, and entertainment are almost expected to win deals or maintain business
- What is the difference between a gift and a kickback?

- **Conflicts of interest**

- Win-win mentality
- “You help me, I help you. What’s the problem?”



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## Issues Facing Managers and Employees



- **Managers**

- Pressure to meet business targets
- Pressure to withhold information about misconduct
- General company environment/pressures
- Company loyalty

- **Employees**

- Most want to work for ethical organization, but do not trust their organization
- Reporting-process, hotlines
- Credibility of compliance team
- Compliance may be viewed as the enemy (anti-business)
- Importance of clear policies and procedures



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## Incentivize Ethical Conduct & Disciplinary Measures



- **Encourage, protect and reward whistleblowers**
  - Avoid dismissive attitude toward whistleblowers
  - No disciplinary action or retaliation should be taken against an individual for reporting an actual or suspected complaint or for participating in an investigation conducted by inside or outside counsel
  - Investigate and document complaints
- **Take consistent action against misconduct**
  - **Regulators expect it.** Failure to fully investigate could be used by regulators as evidence of management's complicity and may result in increased penalties against the company.
  - **Markets expect it.** Failure to fully investigate could affect share prices and affect company's reputation and/or credibility.
  - **The public expects it.** Consistent action along with a timely and decisive response may help with managing any public relations impact.

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## Tips & Insights



- Resist bribery at every point
- Understaffing can lead to little oversight
- Invest in strong internal financial controls and robust third-party screening
- Be vigilant in maintaining the integrity and confidentiality of an internal investigation
- Combat a culture of indifference in remote offices
- Create a contingency plan if an investigation results in the termination of a senior manager or country head



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## Q & A

