WHERE THE BRIBES ARE
Penalties in U.S. Government FCPA Cases Since 1977

SECTORS
- All Sectors: $17.4 billion
- Energy: $6.3 billion
- Manufacturing: $8.23-45.6 billion
- Defense & Aero: $1.0 billion
- Consulting, Misc.: $2.5 billion
- Health & Pharma: $1.7 billion
- Telecom: $1.9 billion
- Agriculture: $0.29 billion
- Infrastructure: $0.43 billion

ABOUT

All Cases
FCPA Penalty Amounts by Country

$0
$3.54 billion

The darker red a country is, the higher the FCPA penalties paid for activities there.

Updated as of Nov 27, 2018
Information Sources: DOJ, SEC, ERI
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➢ Geography

➢ Interaction with types and levels of Governments

➢ Industrial Sector of Operations

➢ Involvement with JVs

➢ Licenses and Permits in Operations

➢ Degree of Government Oversight

➢ Customs and Immigration
➢ Due Diligence Overview and Processes to consider

- What is the scope and how far do you go?
- Who is part of the due diligence team?
- Conduct due diligence on backgrounds and business practices, government/political connections
- Review company documents – including their compliance policies and procedures, code of conduct, etc.
- Interview company personnel
- Conduct financial/forensic review of books and records
➢ What should you be looking for?

- Are they providing accurate and truthful information in response to your requests (i.e. in questionnaires, documents, etc)

- For a 3rd Party, do they have sufficient expertise and capabilities?

- Do they currently or have they in the past used their own agents or subconsultants? How do they select and compensate these agents or intermediaries?

- Do they have an adequate ethics and compliance program in place and do they enforce it?

- Does the company train its employees on ethics and compliance policies and procedures?
➢ What should you be looking for? (cont.)

- What is the corruption risk in the market and specific sector?
- Do they do a lot of business with government clients? What are their interactions with government officials or regulators?
- Do they have connections to current or former government or political officials or their families?
- Have they been asked for bribes and how have they handled?
- Has the company or its principals ever been investigated or prosecuted for bribery, fraud, etc?
- Does the company have a history of significant litigation or regulatory actions?
➢ What should you be looking for? (cont)

- From the financial/forensic review for an acquisition target, are there unusual payments to third parties that need to be investigated?

- Are there adequate internal controls in place?
A World of Consequences

IN A CONNECTED WORLD
WHAT HAPPENS HERE HAPPENS EVERYWHERE
Local Infraction-Global Impact

**Legal**

- Local Investigation & Prosecution
- U.S. & Home Country Investigation & Prosecution (FCPA, SEC, OFAC, UK Anti-Bribery)

**Reputational**

- Local Reputational Damage
- Global Reputational Damage
- Increased Local and Global Scrutiny
Education Essential to Compliance & Local Buy-In

+ Top-Down Compliance Culture
+ Example from the Top
+ Company Wide Code of Conduct & Ethics
+ Company Wide Compliance Program
+ Internal Controls
+ Training + Testing
DOJ Evaluation Of Corporate Compliance Programs

U.S. Department of Justice Criminal Division
Evaluation of Corporate Compliance Programs
(Updated April 2019)
Principles of Federal Prosecution
Justice Manual

Specific Factors For Prosecutor Consideration
Conducting Investigations of Corporations
Bringing Charges
Negotiating Pleas and other Agreements
The adequacy and effectiveness of the corporation’s compliance program at: (1) the time of the offense, as well as at (2) the time of a charging decision” and (3) the corporation’s remedial efforts “to implement an adequate and effective corporate compliance program or to improve an existing one.”
Consideration should be given to whether the corporation had in place at the time of the misconduct an effective compliance program for purposes of calculating the appropriate organizational criminal fine.

See U.S.S.G. §§ 8B2.1, 8C2.5(f), and 8C2.8(11)
Selection of Monitors in Criminal Compliance Matters

Memorandum of AAG Brian Benczkowski

Prosecutors are to consider if corporations:

* Have made significant investments & improvements to compliance programs + internal controls systems

* Have remedial programs + internal control systems been tested to demonstrate future prevention & detection
Compliance Programs Are Not One Size Fits All

+ Compliance programs must be evaluated in the specific context of a criminal investigation
+ Each company’s risk profile and risk reduction solutions warrant particularized evaluation
+ DOJ makes individualized determination in each case
3 Fundamental Questions

1. “Is the corporation’s compliance program well designed?”

2. “Is the program being applied earnestly and in good faith?” In other words, is the program being implemented effectively?

3. “Does the corporation’s compliance program work” in practice?

See JM § 9-28.800.
Critical Local Factors

+ Clear message - misconduct is not tolerated
+ Appropriate policies + procedures
+ Appropriate assignment of responsibility
+ Appropriate training programs
+ Appropriate system of incentives + discipline
+ Ensure that the compliance program is well integrated into operations and workforce
+ Program tailored to Company risk assessment
What are the Local Risks?

+ Risks in the location of company operations
+ Industry sector risks
+ Market competitiveness
+ Regulatory landscape
+ Clients, Business Partners, Third-party vendors
+ Transactions/Payments with Foreign Governments
+ Gifts, travel, entertainment
+ Charitable/political donations
Compliance Resource Allocation

+ Are resources allocated to high risk areas as opposed to low risk areas?
+ Is greater scrutiny focused on high risk transactions as opposed to low risk transactions?
Accessibility in Foreign Locations

+ Has the Company eliminated language and cultural barriers to foreign employee access?
+ Has the Company relayed information in a manner tailored to audience size, sophistication and subject matter expertise?
+ Do the local employees understand the compliance program in practice?
+ Do foreign employees have an anonymous reporting mechanism?