

# Compliance + Local Buy-In

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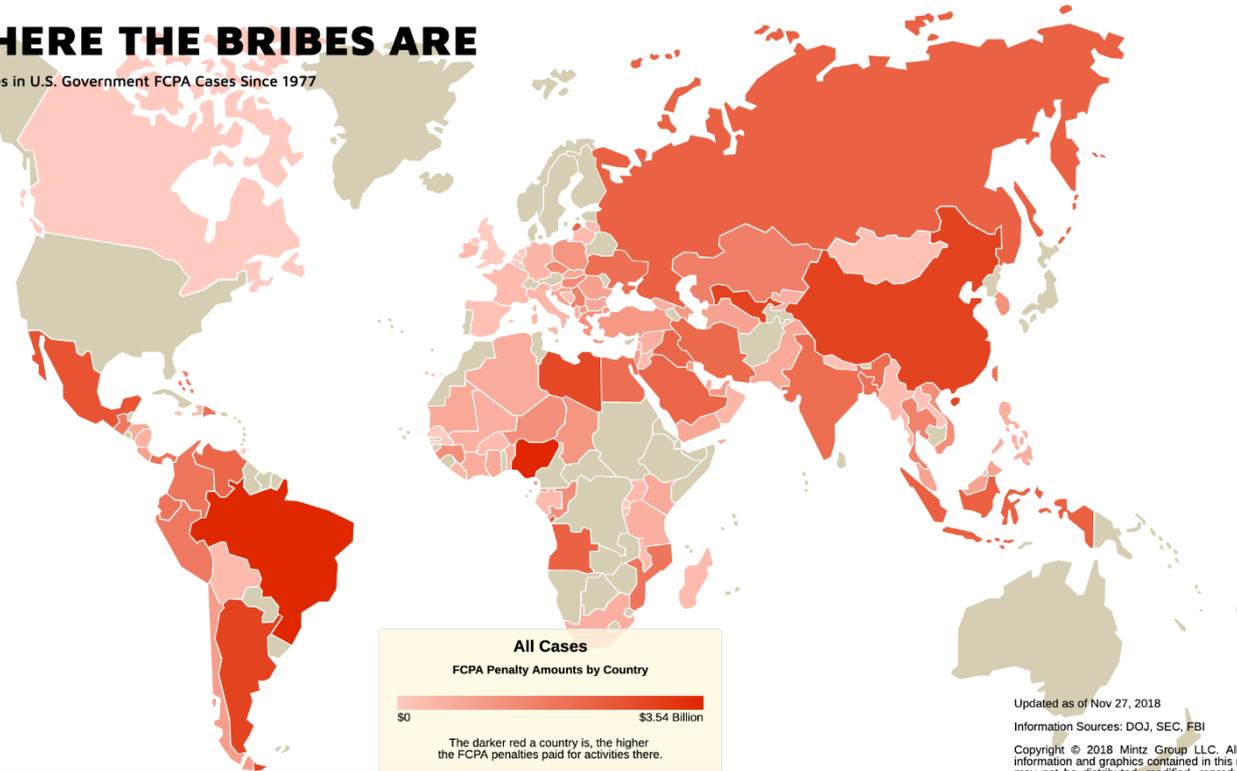
## WHERE THE BRIBES ARE

Penalties in U.S. Government FCPA Cases Since 1977

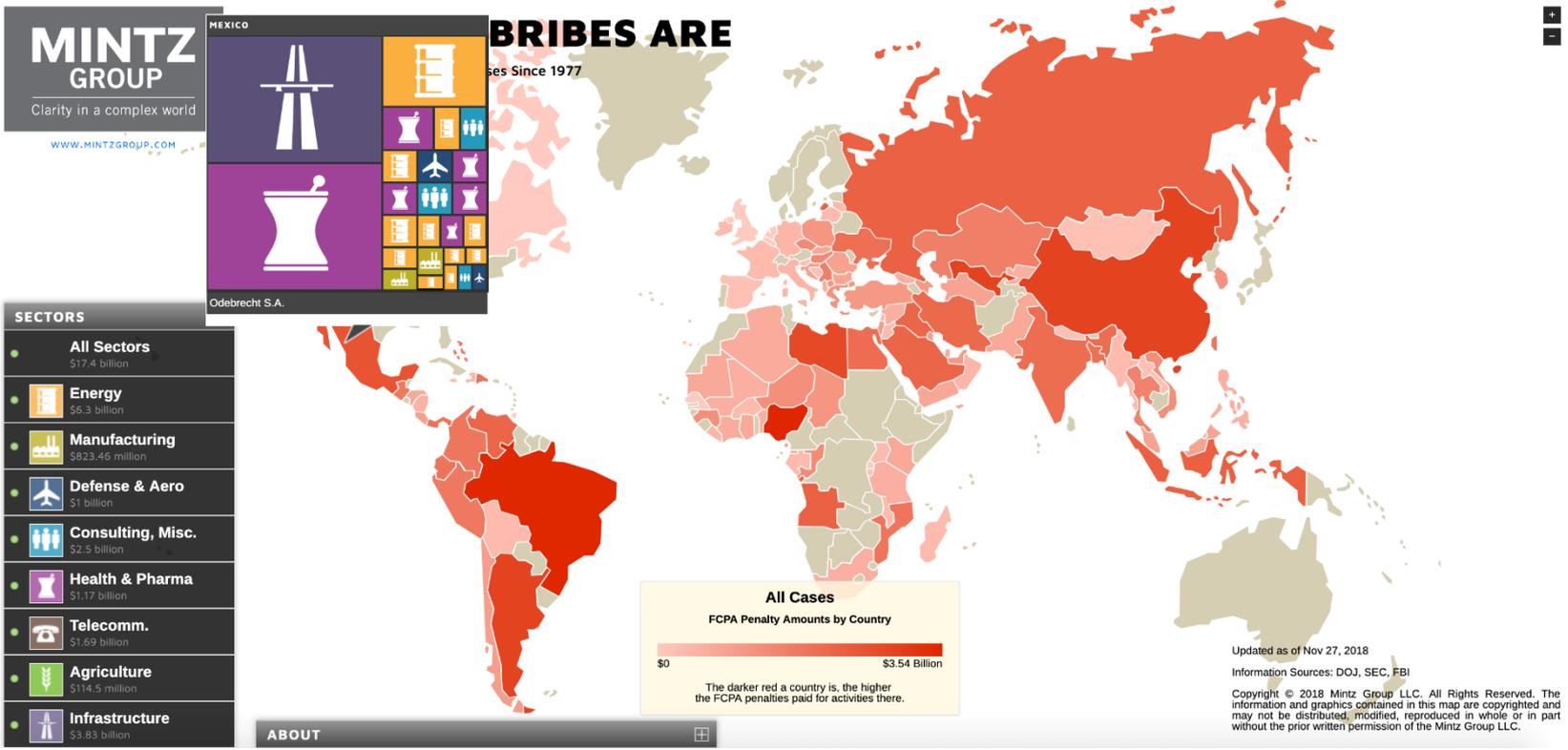
**SECTORS**

- All Sectors  
\$17.4 billion
- Energy  
\$6.3 billion
- Manufacturing  
\$823.46 million
- Defense & Aero  
\$1 billion
- Consulting, Misc.  
\$2.5 billion
- Health & Pharma  
\$1.17 billion
- Telecomm.  
\$1.69 billion
- Agriculture  
\$114.5 million
- Infrastructure  
\$3.83 billion

**ABOUT**



Updated as of Nov 27, 2018  
Information Sources: DOJ, SEC, FBI  
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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 3<sup>rd</sup> 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

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# 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)**

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# Principles of Federal Prosecution Justice Manual

- + Specific Factors For Prosecutor Consideration
- + Conducting Investigations of Corporations
  - + Bringing Charges
- + Negotiating Pleas and other Agreements

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# Justice Manual

## JM 9-28.300, JM 9-28.800, JM 9-28.1000

*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."*

# U.S. Sentencing Guidelines

- + 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)

# Benczkowski Memo

## *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