
HOLLAND & HART^{LLP}



U.S. Foreign Corrupt Practices Act for Beginners

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Agenda



- **Overview of U.S. Foreign Corrupt Practices Act (FCPA)**
 - Anti-Bribery Provisions
 - Accounting Provisions
- **Overview of International Anti-Corruption Laws**
 - OECD Anti-Bribery Convention
 - Chinese Anti-Corruption Laws
- **Anti-Corruption Compliance Programs**



FCPA Penalties



■ Anti-Bribery Provisions

– Criminal:

- Companies = Up to \$2,000,000 per violation
- Individuals = Up to \$100,000 per violation, or imprisonment of up to 5 years, or both

– Civil:

- Companies = Up to \$100,000 per violation
- Individuals = Up to \$10,000 per violation

FCPA Enforcement Authority



Department of Justice

- All criminal enforcements
- All civil actions, except those against issuers

Securities and Exchange Commission

- Only civil actions against issuers

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FCPA Enforcement Authority



- **DOJ & SEC's "A Resource Guide to the U.S. Foreign Corrupt Practices Act"**
 - Released November 14, 2012
 - 130 pages
 - 418 endnotes
 - <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

FCPA: Two Primary Components

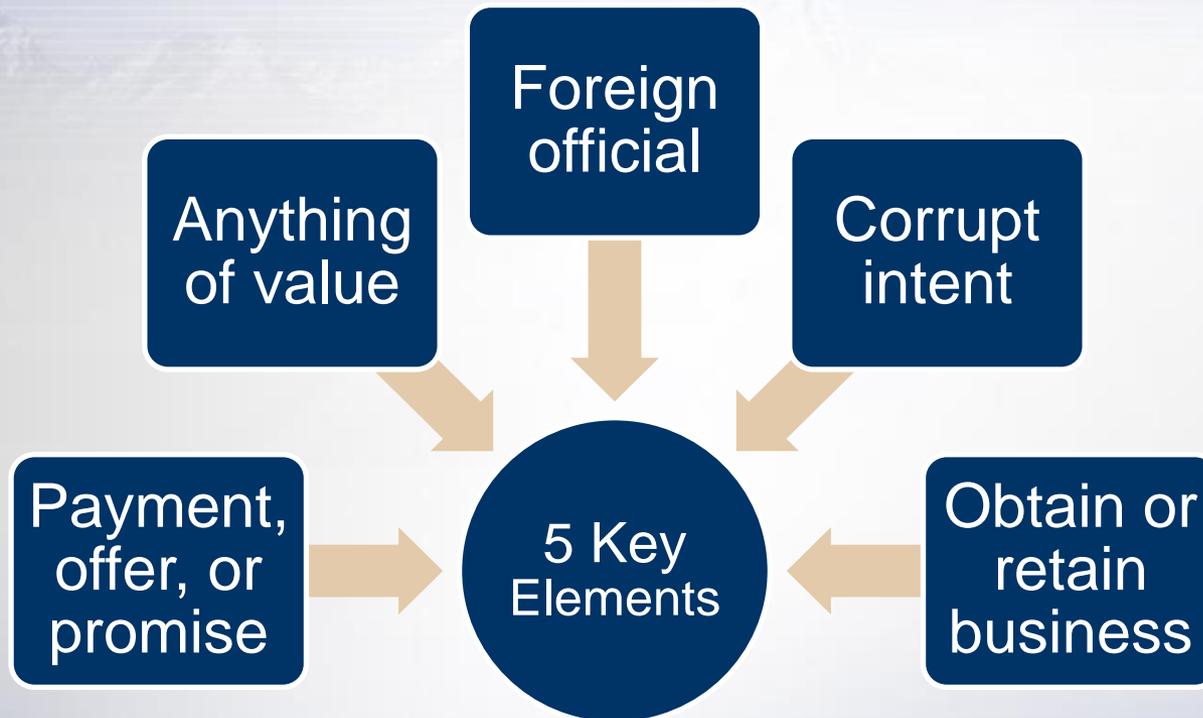


- 1) Anti-bribery Provisions:** Prohibit most bribery and non-routine payments to foreign government officials; and
- 2) Financial Record Keeping & Internal Control Provisions:** Require specific records and financial internal controls to be maintained to provide reasonable assurance of accuracy of financial records and to demonstrate compliance.

FCPA Anti-Bribery Provisions



- **FCPA Anti-Bribery Provisions:**



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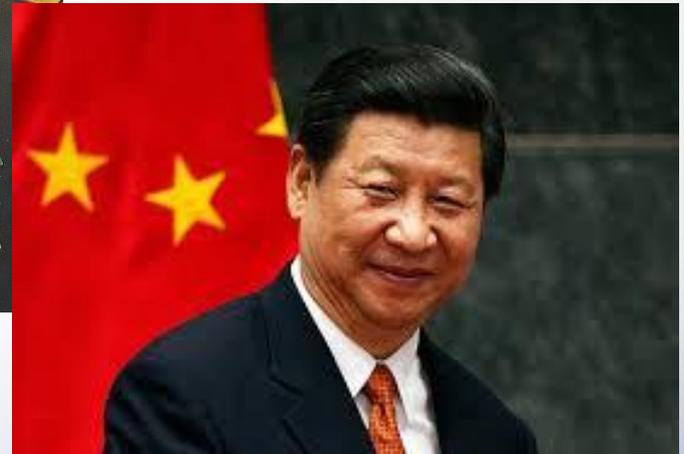
Anything of Value



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Foreign Officials



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What About These Individuals?



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Who Is a “Foreign Official”



- Foreign governments and instrumentalities
 - State-Owned and State-Controlled Companies
- Public international organizations
- Foreign political parties, officials, or candidates
- Royal family members (fact specific)
- Any person, while knowing that all or a portion of thing of value will be promised or given to foreign official

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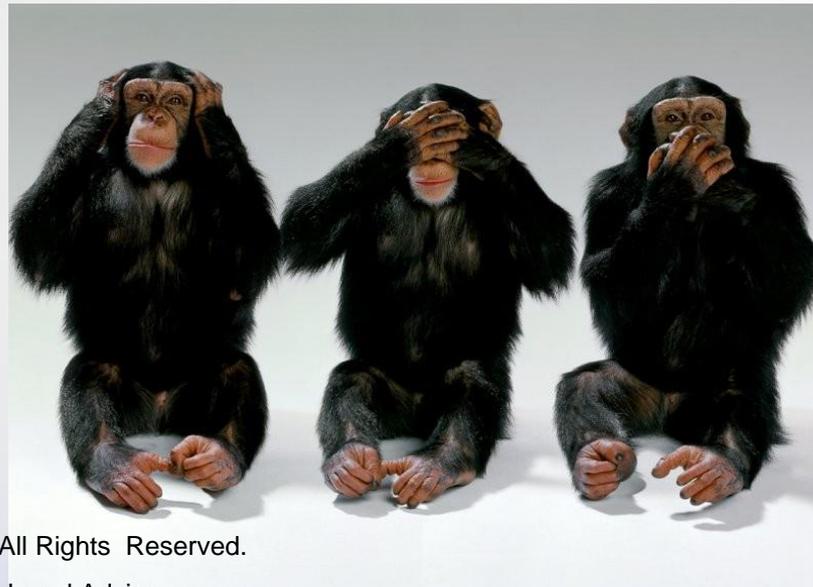
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Foreign Official - Knowledge



A company has “**knowledge**” when it:

- Knows that a bribe will be paid to a foreign official, or
- Consciously disregards a high probability that a bribe will be paid to a foreign official.



Foreign Anti-Corruption Laws



- **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Anti-Bribery Convention”):**
 - Entered into force in February 1999
 - 40 participating countries account for 80% of global exports
 - Includes: Australia, Canada, Mexico, Poland, Russia, United States
 - Excludes: China, Singapore, Taiwan
 - Generally tracks FCPA, with a few exceptions

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Foreign Anti-Corruption Laws



■ Chinese Anti-Corruption Laws:

- Prohibits giving and receiving of bribes and applies to public and private bribery
- Amended on May 1, 2011 to expand prohibition on bribery of foreign officials
- Growing enforcement activity

Compliance Programs



**Written Policy
& Training**

**Due
Diligence**

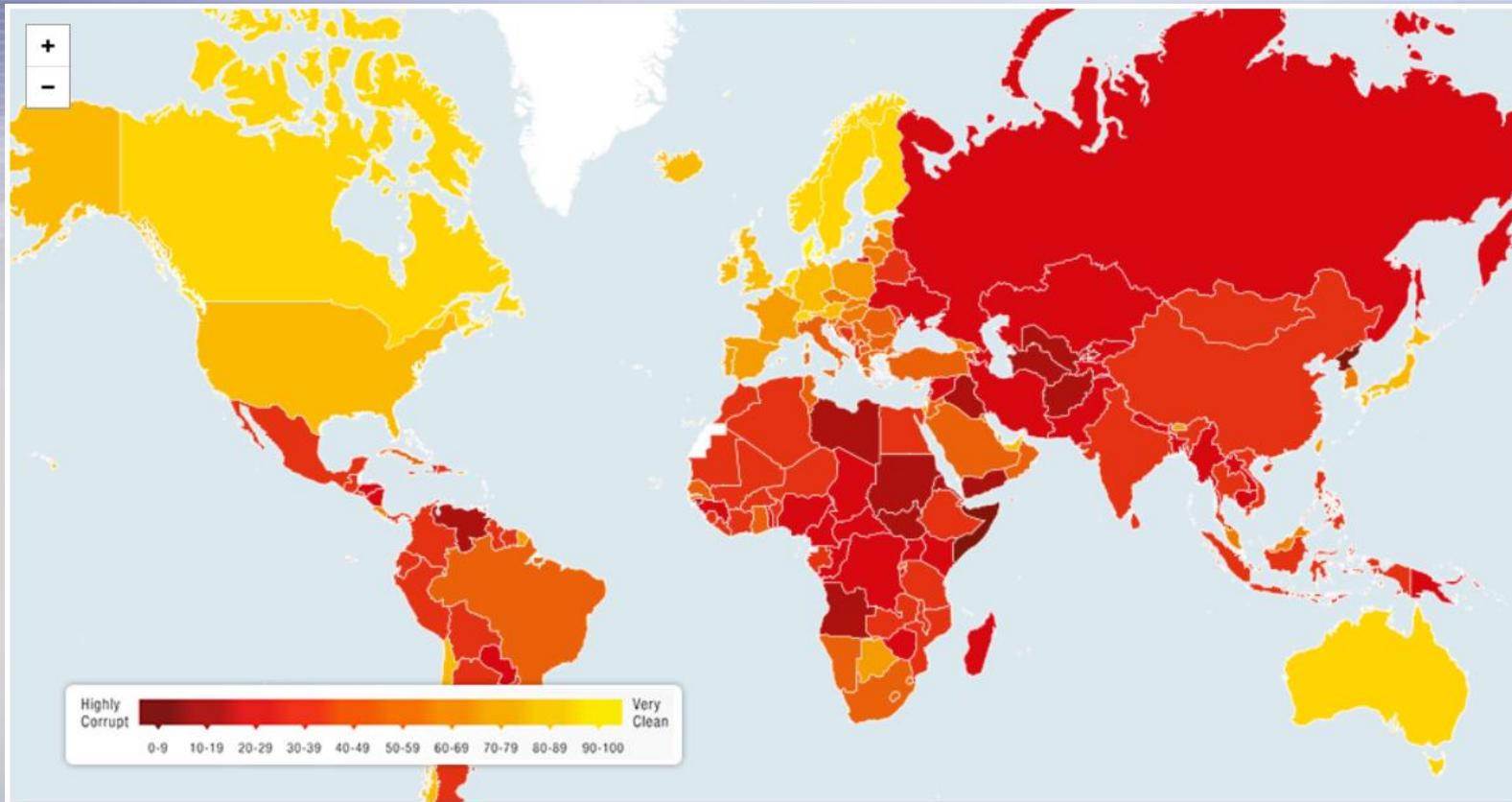
**Compliance
Documentation**

**Compliance
Monitoring**

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Risk Assessment



2014 Transparency International Corruption Perceptions Index

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Risk Assessment



- **High-Risk Industries:**

- Oil and Gas
- Pharmaceuticals
- Medical Devices
- Any industry in which the DOJ and/or SEC have brought enforcement actions

- **Third-Party Intermediaries:**

- Sales Representatives
- Distributors
- Consultants
- Brokers

Written Policy & Training



- Provision of regularly updated written policy
 - Appointment of Compliance Officer/Manager
 - Gifts, Meals, Entertainment, Product Promotion Events, Facilitating Payments, Foreign Political Contributions and Charitable Donations
- Periodic training of key employees and business partners

Written Policy & Training



- Provision of regularly updated written policy
 - Appointment of Compliance Officer/Manager
 - Standard Guidelines
 - Gifts, Meals, Entertainment, Product Promotion Events, Facilitating Payments, Foreign Political Contributions and Charitable Donations
- Periodic training of key employees and business partners

Compliance Documentation



■ **Contract Terms:**

- Representations and covenants
- Certification obligation
- Right of termination
- Audit rights

■ **Procedures and Certifications**

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Compliance Monitoring



- **Compliance Monitoring:**

- **Periodic Certifications:**

- Employees, Directors & Officers
- Foreign Partners

- **Whistleblower Procedures:**

- Immediate reporting to Compliance Officer
- Strict prohibition on retaliating against anyone for raising or helping to address anti-bribery issues

- **Periodic Audits**

Conclusion



ANY
QUESTIONS
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