Baker & McKenzie

# Managing Risk, Not Avoiding It: Strategies for Risk Mitigation

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# FCPA Risk in Emerging Markets: Overview

- **Why do emerging markets pose a high FCPA risk?**
  - Language and culture barriers require employment of third parties whose behavior may be difficult to control
  - Complex regulatory schemes create more frequent contacts with foreign officials who may solicit bribes
  - Numerous state-owned entities means greater risk of liability if employees are deemed to be foreign officials
  - Cultural acceptance of bribery or expectation of payment as a routine “cost of doing business” may create risk

# FCPA Risk in “**BRIC**” Countries: **Brazil**

- **Risk Factors:**
  - Complex regulatory system requires reliance on local third-party agents who may violate FCPA
  - Competition for valuable public contracts, particularly due to the 2016 Olympics, creates incentive for bribery
- **Recent News:**
  - National protests led to new antibribery law in April 2013
  - Scored 43/100 on 2012 Corruption Perceptions Index
  - *Biomet* settled FCPA case in March 2012 for $22m

# FCPA Risk in “**BRIC**” Countries: **Russia**

– **Risk Factors:**
  - Central political authorities control the most profitable business ventures and often use power to coerce bribes
  - Cultural expectation that companies will pay small bribes to officials in order to obtain services or licenses

– **Recent News:**
  - Kremlin launched anti-corruption campaign in Fall 2012
  - Scored 28/100 on 2012 Corruption Perceptions Index
  - *Eli Lilly* settled FCPA case in December 2012 for $29m

# FCPA Risk in "**BRIC**" Countries: **India**

- **Risk Factors:**
  - Poorly paid employees of a vast government bureaucracy often turn to bribery to afford expensive elections
  - Local officials use complex state-level licensing and certification regimes to extort bribes
- **Recent News:**
  - New foreign investment law likely to increase corruption
  - Scored 36/100 on 2012 Corruption Perceptions Index
  - *Diageo* settled FCPA case in July 2011 for $16m

# FCPA Risk in "**BRIC**" Countries: **China**

- **Risk Factors:**
  - Culture of gift-giving creates expectation that companies will make payments in violation of the FCPA
  - Vast number of Chinese state-owned entities means greater risk of FCPA liability for acts of bribery
- **Recent News:**
  - Bribery typical in underfunded, growing medical system
  - Scored 39/100 on 2012 Corruption Perceptions Index
  - *Pfizer* settled FCPA case in August 2012 for $45m

# FCPA Risk in “**MIST**” Countries

– **Mexico:**
  - CPI Score 34/100; *Orthofix* settled for $5.2m
  - *Wal-Mart* allegedly engaged in systematic bribery of mayors, city council members, bureaucrats, and others, and had spent $230m on its investigation by May 2013

– **Indonesia:**
  - CPI Score of 36/100; *Allianz* settled in 2012 for $12.3m
  - Head of Indonesia’s oil regulatory agency arrested in August 2013 for allegedly accepting $400k in bribes

# FCPA Risk in “**MIST**” Countries Cont.

- **South Korea:**
  - CPI Score of 56/100; *IBM* settled in 2011 for $10m
  - Recent efforts to increase transparency and combat corruption include the first prosecution under the FBPA, the Korean version of the FCPA, in May 2012
- **Turkey:**
  - CPI Score of 49/100; *Tyco* settled in 2012 for $26m
  - Deeply rooted tradition of gift-giving combined with the need for third-party agents creates substantial risk