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Anti-Corruption Developments to Expect in Asia in 2014

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Recent anti-corruption enforcement developments in Asia should serve as a call to action for international and domestic companies operating in the region. In light of these developments — which include increased enforcement (and pressure to enforce) anti-corruption laws and an increasing amount of multinational cooperation around anti-corruption issues — companies are well-advised to conduct a corruption risk assessment and evaluate their current compliance programs, including the adequacy of their internal controls, before problems arise or, worse yet, a government investigation is initiated. In particular, companies operating in countries traditionally considered "lax" in their enforcement of such laws should be aware of the growing potential in the region for increased enforcement.

Below are some of the developments to follow in 2014 that could impact companies doing business in the region:

Increased Enforcement of Anti-Bribery Laws in China

Put simply, doing business in China is complicated and, if this past year is any indication, it is becoming more complicated for foreign firms seeking to do business there. But China's allure for economic opportunity remains bright for multinational companies. Since China joined the World Trade Organization more than a decade ago, the Chinese government has made concerted efforts to encourage foreign investment, and foreign companies seeking opportunities in the second largest economy in the world — and one of the fastest growing — have responded with ever-increasing investment. From limits on market access to what can be perceived as stifling government bureaucracy, to rampant theft of intellectual property and adulteration of products, the list of challenges and risks in China is long, complicated, and growing.

One of those risks is corruption. China ranks No. 80 on Transparency International's Corruption Perceptions Index, just after Tunisia and just before Swaziland. Of the world's Top 10 largest economies, only two countries rate lower on Transparency International's index — India at No. 94 and Russia at No. 127. Indeed, corruption risk in China is compounded not only by its legendary bureaucracy, but also by its complex system of state-owned enterprises (SOEs). Besides making up a substantial part of the national economy, the sheer number of SOEs in China is daunting: more than 144,000. Under many foreign bribery laws, including the U.S. Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act, the employees at many of these SOEs may qualify as foreign officials depending on the facts and circumstances.3 Beyond its bureaucracy and web of SOEs, the expectation of gift-giving and the focus on guanxi (关系) have long made China one of the most challenging markets in which to operate in terms of corruption risk.

A review of historical FCPA enforcement actions reflects this challenging and complex business environment. In just the last four years, China has been cited 26 times as a country in which corruption occurred as at least part of the basis for an FCPA enforcement action. Those 26 appearances of China in FCPA enforcement actions give it the dubious honor of being No. 2 of all countries in the world, just behind Nigeria. Clearly, China and companies doing business in China are on the radar of U.S. enforcement authorities.

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