

# Anti-Corruption Investigations & Compliance

Risk identification framework for uncovering compliance red flags

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March 21, 2017*



# Anti-Corruption Investigations & Compliance Agenda

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**March 21, 2017**

**12pm – 1pm**

**Houston Bar Association, Corporate Counsel Section**

- The Corruption Landscape
- Risk Identification Framework
- Risk Profiling
- **Data Acquisition and Analytics**
- **Transaction Testing**
- Q&A

# A Brief Word on the Corruption Landscape

Nearly every organization that operates outside its own borders or accepts foreign investment and trade, through its respective businesses and public officials, runs the risk of participating in bribery and corrupt practices.

**The proof is in the headlines...**

## A Few Recent Examples of Settlements

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**China Fines GlaxoSmithKline \$500 million to Resolve Bribery Violations** *September 2014*



**SEC Charges Goodyear With FCPA Violations** *Feb 2015*



**Avon Pleads Guilty to Violating FCPA - \$135 million in penalties** *Dec 2014*



**SEC Charges BNY Mellon With FCPA Violations** *Aug 2015*



**VimpelCom to pay \$795 million in Global Settlement of FCPA Violations** *February 2016*

# Risk Identification Framework

### **Four Phased Approach**

- Phase 1 – Initial Risk Assessment
- Phase 2 – General Evaluation of Company Compliance and Risk Awareness
- Phase 3 – Targeted Company Compliance Risk Assessment
- Phase 4 – Reporting



## Risk Identification Framework

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- Risk-based methodology for identifying corruption risks
- Can be utilized in proactive or reactive projects
  - Pre or Post Transaction Due Diligence
  - Compliance risk assessments
  - Investigations

*“Devoting a disproportionate amount of time policing modest entertainment and gift-giving instead of focusing on large government bids, questionable payments to third-party consultants, or excessive discounts to resellers and distributors may indicate that a company’s compliance program is ineffective.”*

*--FCPA Resource Guide*

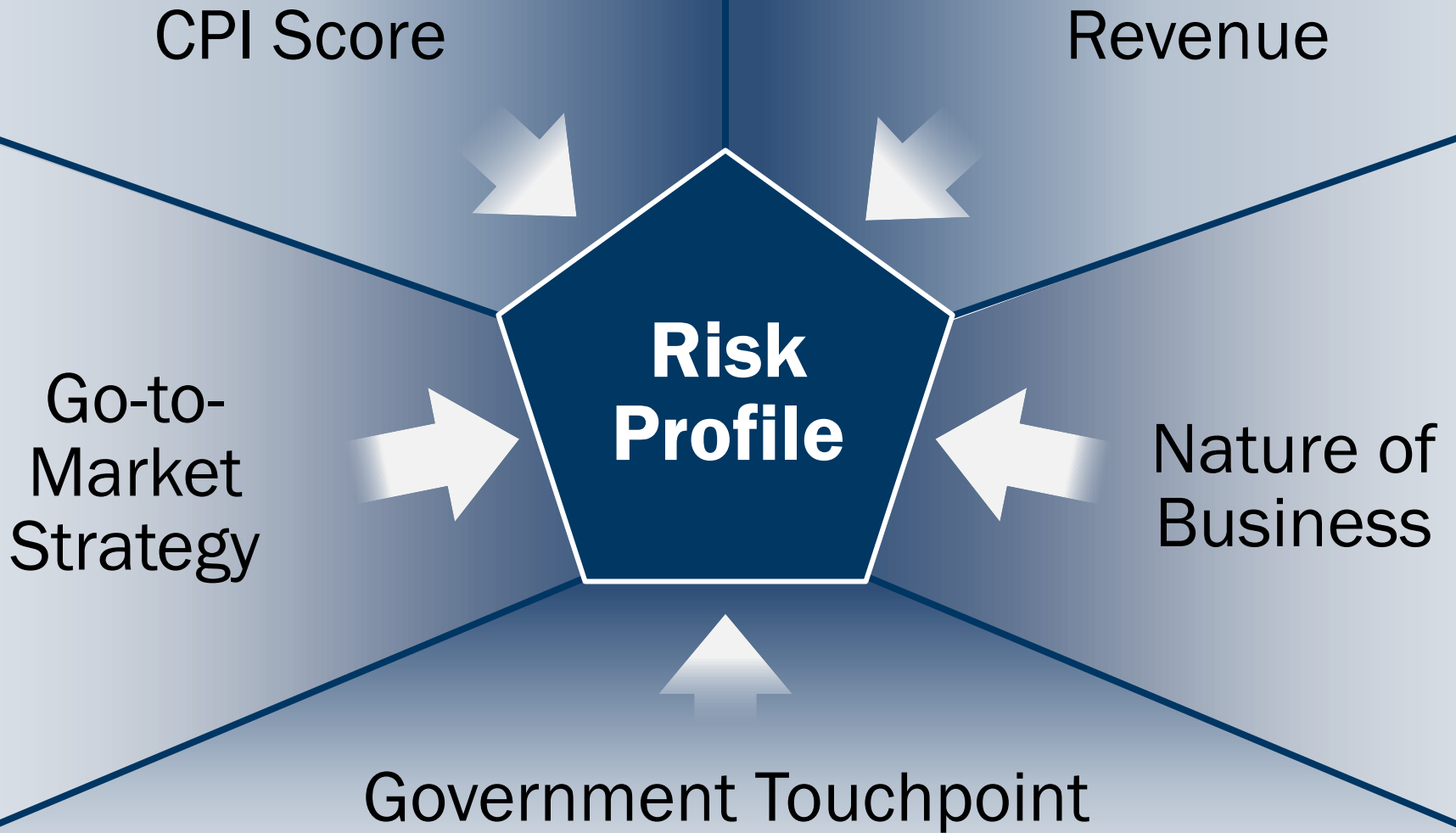




## Phase 1 – Initial Risk Assessment

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- Preliminary analysis and identification of compliance and risk red flags
  - Country (e.g., CPI)
  - Industry
  - Partners
  - Business model (e.g., use of third party intermediaries)
  - Interaction with government officials
  - Past corruption issues
- Usually entails reviewing publicly available information
- Informs the agenda items for Phase 2



## Identify Your Risks - Highest Risk Industries

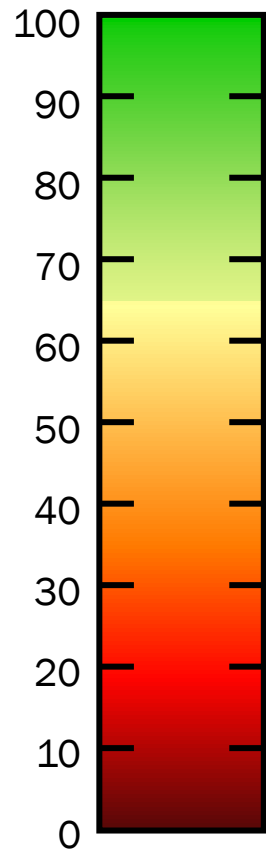
Rank	Sector	Score	Number of Observations
1	Agriculture	7.1	270
1	Light manufacturing	7.1	652
3	Civilian aerospace	7.0	89
3	Information technology	7.0	677
5	Banking and finance	6.9	1409
5	Forestry	6.9	91
7	Consumer services	6.8	860
8	Telecommunications	6.7	529
8	Transportation and storage	6.7	717
10	Arms, defense and military	6.6	102
10	Fisheries	6.6	82
12	Heavy manufacturing	6.5	647
13	Pharmaceutical and healthcare	6.4	391
13	Power generation and transmission	6.4	303
15	Mining	6.3	154
16	Oil and gas	6.2	328
17	Real estate, property, legal and business services	6.1	674
17	Utilities	6.1	400
19	Public works contracts and construction	5.3	576

Source: Transparency  
International Bribe  
Payers Survey

*Possible scores range from 0 to 10, with 0 representing the view that 'bribes are almost always paid' and 10 that 'bribes are never paid'.*

## Identify Your Risk – CPI and Revenue

### Transparency International Corruption Perceptions Index (CPI)



#### **Scores:**

CPI < 50 = serious corruption

CPI < 30 = rampant corruption

### Revenue

#### **Higher revenue typically means:**



Broader interaction with customers and third parties



Larger or more frequent sales



Higher operating expenses

# Identify your Risk – Go-To-Market Strategy and Government Touchpoints

## Go-To Market Strategy

### Does the Company?

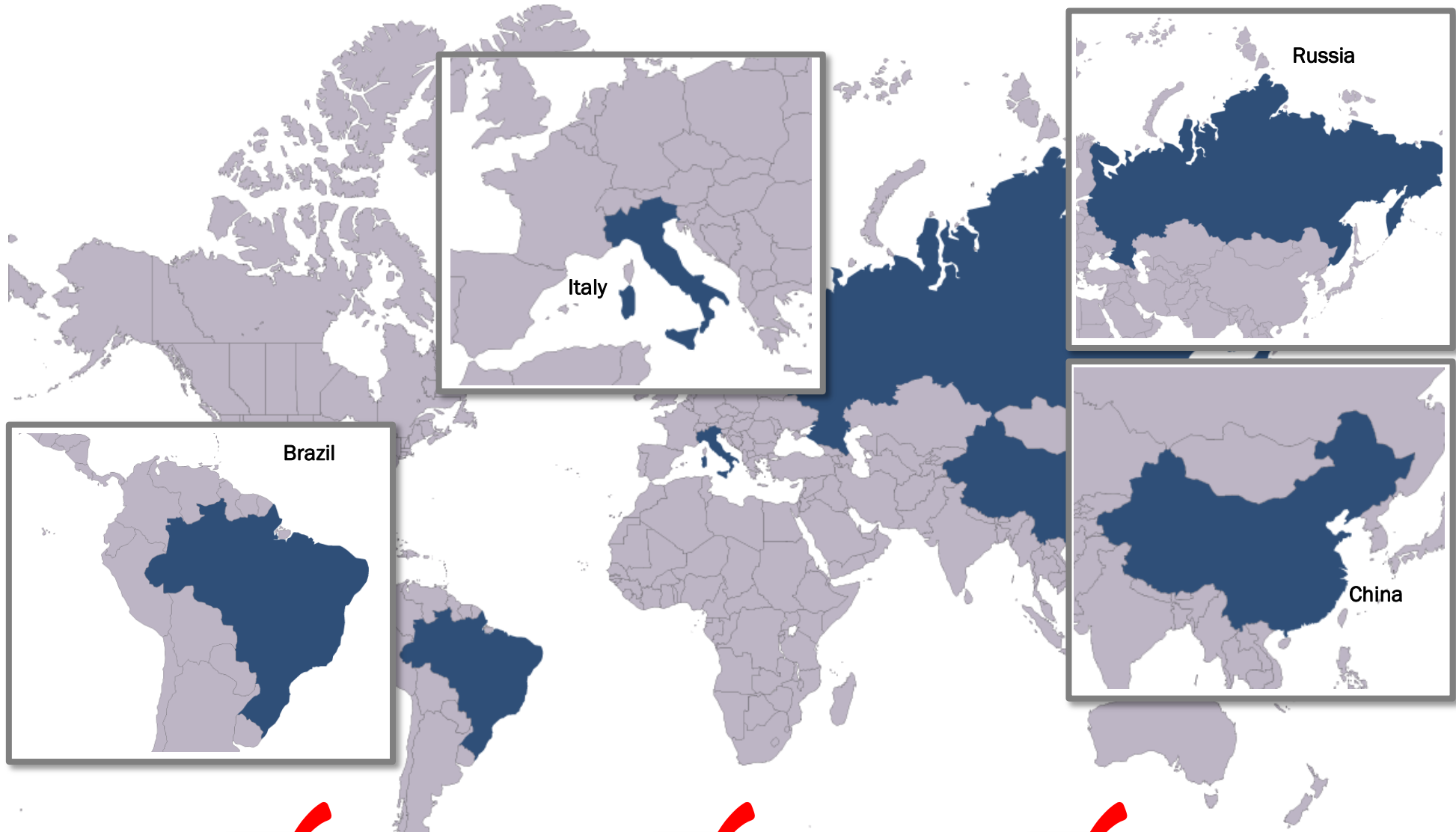
- Sell directly to customers
- Use distributors, agents, or sales consultants
- Participate in competitive tenders
- Engage in significant business development activities

## Government Touchpoints

### Does the Company?

- Sell to government owned or controlled customers
- Broker goods either directly or through an agent
- Have products or premises requiring licensing, registration or inspection
- Move product through customs, directly or indirectly?

# Initial Risk Analysis



✓ Sales to Government

✓ CPI Factor < 50

✓ Significant Revenue



## Phase 2 – General Evaluation of Company Compliance and Risk Awareness

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- Informal Q&A of company management
- Assessment of the “Tone at the Top” and culture of the organization
- Existing anti-corruption policies
- Compliance responsibility and reporting lines
- Compliance resources/budget
- Anti-corruption training
- Frequency and disposition of prior corruption issues identified
- Informs the agenda items for Phase 3



## Phase 3 – Targeted Company Compliance Risk Assessment

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- Steps taken should be proportionate to the prior risks identified in Phases 1 and 2
- Tailored risk and compliance steps
  - In depth interviews
  - Data acquisition and analytics
    - Structured data
    - Unstructured data
  - Accounting transaction testing
  - Detailed document requests and review





## Phase 4 - Reporting

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- Multiple options
  - Written reports
  - Oral report
  - Reporting of significant red flags only
  - Reporting of all red flags
  
- Detailed reporting may demonstrate “good faith” attempt to identify issues if post-review compliance issues arise later
  
- Document, document, document . . .

# Data Acquisition and Analytics

### **What do you need and who can provide it?**

- Policy and procedure documents
- Organizational charts
- Training materials
- Chart of Accounts
- General Ledgers
- Sales by customer matched to revenues per the General Ledgers
- Vendor Master File

### **The devil is in the details**

- Reviewing the Chart of Accounts and the General Ledger is key
  - What types of accounts does the company have?
  - How large are the balances in these accounts?
- Expense accounts that may indicate increased corruption risks
  - Permits
  - Visas
  - Customs and freight
  - Taxes
  - Third-party service providers  
(agents, business representatives, consultants)
  - Lobbying fees
  - Facilitating payments
  - Political and charitable contributions
  - Marketing activities
  - Other/Misc accounts

### **Getting your hands on the details**

- Companies can generally provide data at the transaction level through an export from their accounting system
  - Excel, text or MS Access dump
  - Considerations include cost and likelihood of manipulation of the data and whether the data should be acquired by an independent third-party
  
- When the data is received, it is very important to confirm
  - All periods requested were provided
  - All accounts were provided
  - All available fields were provided
  
- Once completeness has been assessed, the next step is analysis
  - Depending on the data volume, Excel, SQL or other tools can be used for the analysis

- Increasing volume/complexity of structured and unstructured data
- Data privacy and state secrets concerns
- Multiple languages

# Transaction Testing



## Transaction Testing – Key Areas

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### ■ Revenue

- Tenders or bids
- Sales
  - Direct
  - Distributor
  - Government and Private
- Contract review
- Vendor due diligence activities
- Other asset accounts
- Discounts
- Credit notes

### ■ Expenses

- Cash and petty cash
- Employee expenses
- High risk General Ledger account expenses
  - Specific Risk
  - General Risk
- Payments to high risk individuals/entities



## Revenue Risks – What might you be looking for?



### **Transactions with distributors, sales agents and government customers**

- Discounts and preferential pricing
- Rebates
- Commissions
- Discounts
- Credit notes/invoice return
- Other Incentives

## Expense Risks - What might you be looking for?



- Payments outside scope of core business
- Expenses related to purchase of retail goods and other gift items
- Payments to known offshore banking centers
- Payments to unknown entities or individuals
- Payments to locations other than where the entity is registered or does business
- Generic or miscellaneous line items are used (waiting costs, line fees, consulting fees)
- Urgent payment requests

### Transaction Sample Selection

- Practical considerations for the number of transactions to test
  - Statistical/non-statistical review
  - Number of years under review
  - Number of accounts utilized
  - Investigation or a risk assessment
  - Time available to conduct testing
- Considerations for the selection of transactions for testing
  - Dollar amount (e.g., *materiality*)
  - Round dollars
  - Key word searches
  - Specific vendors
  - Higher risk accounts
  - Random selections
  - Payments just under approval thresholds

- Embrace the numbers
- Partner internally
- Educate upper management with stories relevant to your business – Cell Block D is generally effective.

# Critical Thinking at the Critical Time™

# FTI Consulting: A Leader Among Leaders

**FCN**

Publicly traded

**\$1.58BLN**

Marketing capitalization

**1982**

Year founded

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Total employees worldwide

**450+**

Senior Managing Directors

**79**

Offices in 79 cities around the globe

**18**

Experts in 18 industry specialties

**2 Nobel Laureates**

**10/10**

Advisor to the world's top 10 bank holding companies

**95/100**

Advisor to 95 of the world's top 100 law firms

**55/100**

55 of Global 100 corporations are clients



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Corporate Finance & Restructuring	Economic Consulting	Forensic and Litigation Consulting	Strategic Communications	Technology
<ul style="list-style-type: none"> <li>Bankruptcy Support Services</li> <li>Interim Management</li> <li>Investment Banking</li> <li>Performance Improvement</li> <li>Private Equity</li> <li>Restructuring/Turnaround Services</li> <li>Transaction Advisory Services</li> <li>Strategic Planning &amp; Advisory Services</li> </ul>	<ul style="list-style-type: none"> <li>Antitrust &amp; Competition Economics</li> <li>Business Valuation</li> <li>Intellectual Property</li> <li>International Arbitration</li> <li>Labor &amp; Employment</li> <li>Public Policy</li> <li>Regulated Industries</li> <li>Securities Litigation &amp; Risk Management</li> </ul>	<ul style="list-style-type: none"> <li>Compliance, Monitoring &amp; Receivership</li> <li>Loss Quantification</li> <li>Dispute Advisory Services</li> <li>Forensic Accounting &amp; Advisory Services</li> <li>Global Risk &amp; Investigations Practice</li> <li>Intellectual Property</li> <li>Trial Services</li> </ul>	<ul style="list-style-type: none"> <li>Creative Engagement</li> <li>Financial Communications</li> <li>Corporate Communications</li> <li>Public Affairs</li> <li>Strategy Consulting &amp; Research</li> </ul>	<ul style="list-style-type: none"> <li>Information Governance &amp; Compliance</li> <li>Computer Forensics &amp; Investigations</li> <li>Discovery Consulting</li> <li>eDiscovery Software &amp; Services</li> </ul>

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 Construction & Engineering	 Energy, Power & Products	 Financial Institutions	 Healthcare & Life Sciences	 Insurance	 Real Estate & Infrastructure	 Retail & Consumer Products	 Telecom, Media & Technology
 Aerospace & Defence	 Agriculture	 Automotive	 Environmental	 Government & Public Contracts	 Hospitality, Gaming & Leisure	 Mining	 Transportation



# Overview of FTI Consulting