

FCPA Trends and the TLS Solution

It is no secret that the Obama administration has increased Foreign Corrupt Practices Act (FCPA) enforcement. Since the law's inception in 1977, the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have brought more FCPA allegations against companies during this administration than during any other President's tenure. Although the reasons for increased enforcement are many, one key trend stands out from the rest: enforcement stemming from the increased presence of emerging markets in the global economy (including countries such as Angola, Brazil, China, Mexico, and Russia). Studies, such as those performed by Transparency International (TI), have analyzed perceived public sector corruption in more than 170 countries. These studies are assisting corporate counsel and compliance professionals in understanding where alleged bribery may be taking place and where corporate counsel should be targeting compliance efforts. In this article, TransPerfect Legal Solutions (TLS) will compare trends based on the work we perform on behalf of our clients.

With over 20 years' experience, TLS is a leading provider of litigation support services to law firms and corporate counsel worldwide. Our full range of solutions includes forensic data acquisition and consulting, e-discovery and early data assessment, managed review and legal staffing, language services, deposition and trial support, and paper discovery and production. We are a member of the TransPerfect family of companies, which is the world's largest privately held provider of translation and global business services.

The TLS Anti-Corruption Practice Group put together a study to help counsel its client base as to where they may want to consider localizing ethics and compliance policies, training programs, and whistleblower hotlines. The study analyzed data from 40 FCPA compliance and monitoring endeavors that the company has actively worked on since January 1, 2012. More than 1,000 individual translation projects were analyzed across 40 companies spanning the following industries: pharmaceuticals and medical device, consumer products, energy, financial, real estate, hospitality, travel, media/entertainment, manufacturing, automotive, and technology. The three industries that were most highly represented were: consumer products (8), pharmaceuticals and medical device (5), and tech companies (5). The study analyzed where these companies faced linguistic challenges in the implementation of FCPA compliance and litigation strategies. After collecting the data, the results were compared to the trends published by Transparency International and other reports.

Of the 40 companies that worked with TLS to translate documents related to anti-corruption efforts, 35 of them had programs targeting Brazil, China, or Mexico (or some combination thereof). That is not to say that any of these three are the "most corrupt"—it simply shows where the 40 corporations that were studied have spent considerable time and resources towards educating and monitoring their in-country staff. Other countries that come up frequently are Angola, Japan, India, Italy, Russia, and Thailand.

Our results are consistent with the TI 2012 Corruption Index. The TI report lists 176 countries scored on the perception of being "highly corrupt" to "very clean." The higher the number, the more corrupt the country is perceived to be. Brazil, China, and Mexico came in respectively at 69th, 80th, and 105th. Denmark had the top ranking, and the United States checked in at 19th. Italy, Vietnam, and Russia ranked 72nd, 123rd, and 133rd respectively.

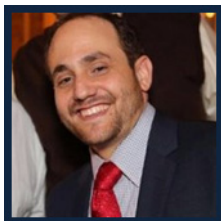
Let's take a closer look at the three countries we singled out (Brazil, China, and Mexico). China and Mexico often dominate the headlines when it comes to FCPA allegations. Look no further than the WalMart investigation, which began in Mexico, and the GlaxoSmithKline investigation, which began in China. In the Asia Pacific region, only Vietnam, Thailand, North Korea, and the Philippines fared worse than China. Of all the North American countries, Mexico ranked last. In addition to assisting with investigations in the above mentioned countries, TLS sees heavy compliance activity in China and Mexico. Of the 40 companies that were studied, 38 translated at least one compliance-related document with ties to China and/or Mexico. There is no mistaking the similarities in the TI report and the TLS report. China and Mexico are exposed to heightened corruption risks. Both are also emerging economies with an expanding middle class, making them important growth markets for multinational corporations.

When comparing Brazil to other countries in South America, its ranking of 69th is somewhat ahead of the curve. However, when you consider the rate at which businesses are flocking to this South American economic leader, it does give cause for concern. This draws an easy correlation to the fact that many of the corporations TLS studied are routinely testing and revising anti-corruption compliance programs in Brazil. Pharmaceuticals, energy companies, and consumer products companies are all instituting rigorous multilingual compliance programs dedicated to Brazil. Some measures are merely translating the policies so local employees are fully aware of them, while others are going much further by fully localizing e-learning modules, company intranet sites, and establishing whistleblower hotlines for their staff.

Digging deeper into industry-specific feedback, one can find additional trends. Seven of the eight consumer products companies that were studied had TLS assist with translations for Brazil, China, and Mexico. All five of the pharmaceutical and medical device companies and all of the technology companies had TLS localize documents for Brazil, China, and Mexico. Interestingly, of the two energy companies in the study, TLS assisted both with localization efforts in the southern African country of Angola—making it a potential area of focus for anti-corruption professionals in this industry. Not coincidentally, Angola comes in at 157 on the Transparency International Corruption Index.

In summary, bribery and corruption is an endemic global business concern. These concerns apply to many countries, and while the US has lead the charge in prosecuting and eliminating corruption from business practices, other countries like the United Kingdom and China have implemented new laws to help curtail the widespread allegations of bribery around the world. The solution is not simple, though the mantra can be put boldly: Be compliant and be prepared.

**Reference: <http://www.transparency.org/cpi2012/results/>*



About the Author: Jason Perkins is the director of TLS' anti-corruption practice group. TLS is a member of the TransPerfect family of companies. Mr. Perkins frequently works with law firms and corporations to advise them on the cultural and linguistic challenges associated with anti-corruption due diligence, investigations, and compliance. Mr. Perkins is a graduate of the University of Maryland.