

Anti-Corruption and Anti-Money Laundering in the Time of COVID-19

May 21, 2020

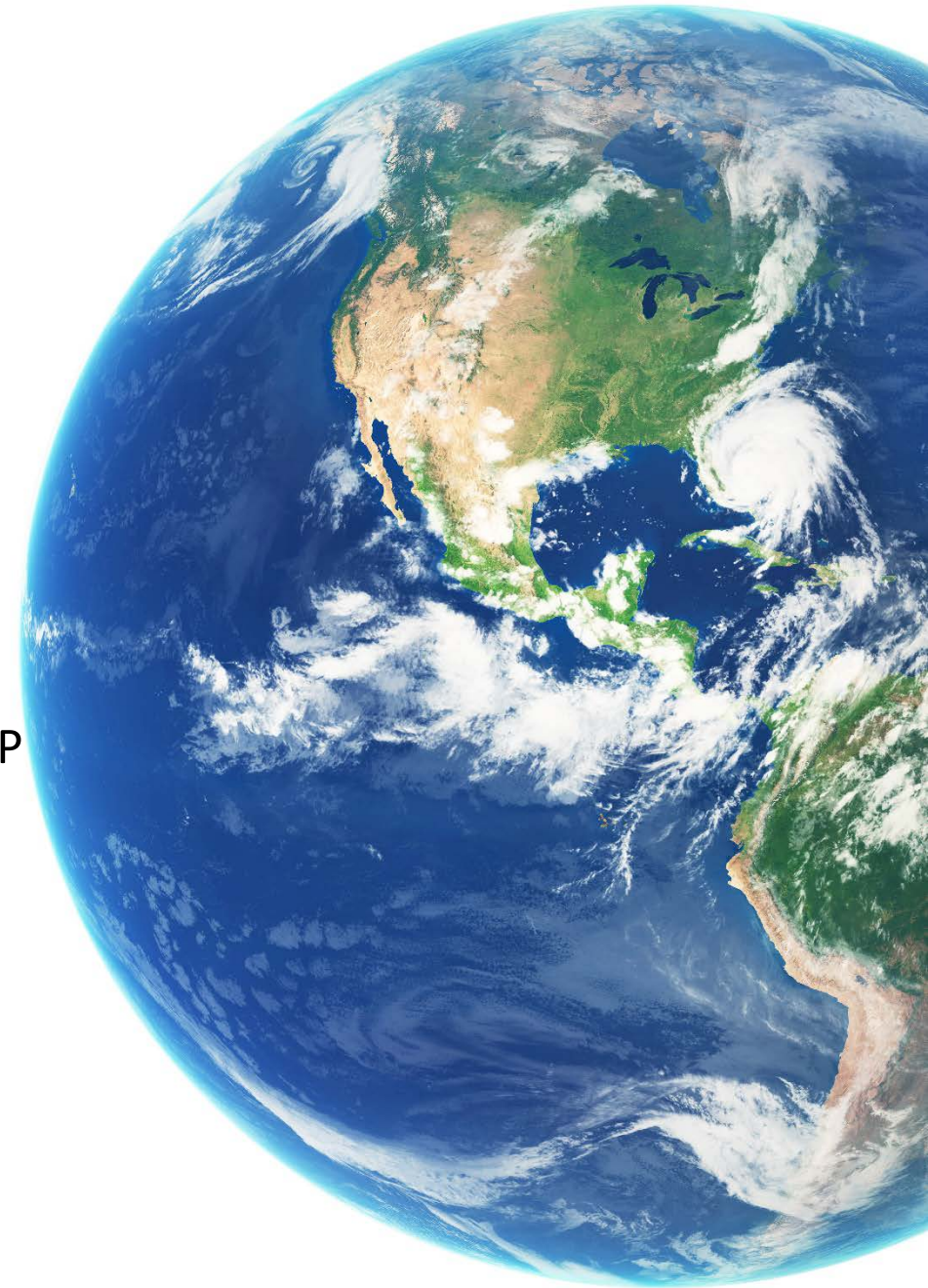
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International Trade

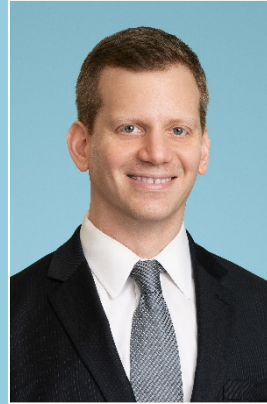
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The Pandemic Risk Landscape



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Risk in Times of Chaos – Corrupt Officials, Bad Actors and Opportunists

1. Scarce supply and high demand (e.g. N95 masks, PPE, ventilators)
2. Disrupted supply chains, fraud and market confusion
3. National governments, multilaterals and NGOs are engaging in massive procurement, spending and distribution
4. Regulation of import, export, trade and transport puts government officials in key chokepoints
5. Money laundering in a time of disruption – pressure on financial gatekeepers

The Pandemic Risk Landscape



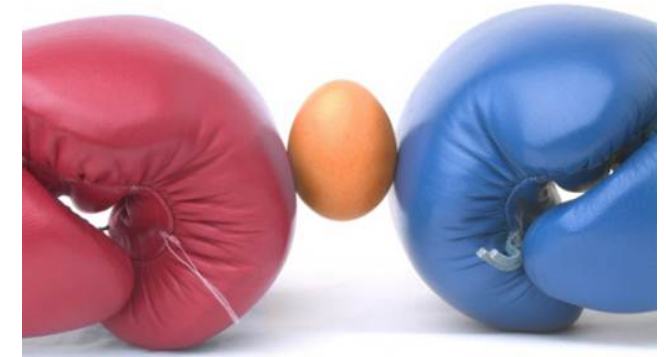
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Traditional Perception

- Anti-corruption and Anti-Money Laundering (AML) enforcement is driven by the United States – watch out for U.S. Jurisdiction and the FCPA

Current Reality in 2020 = Cross-Fire

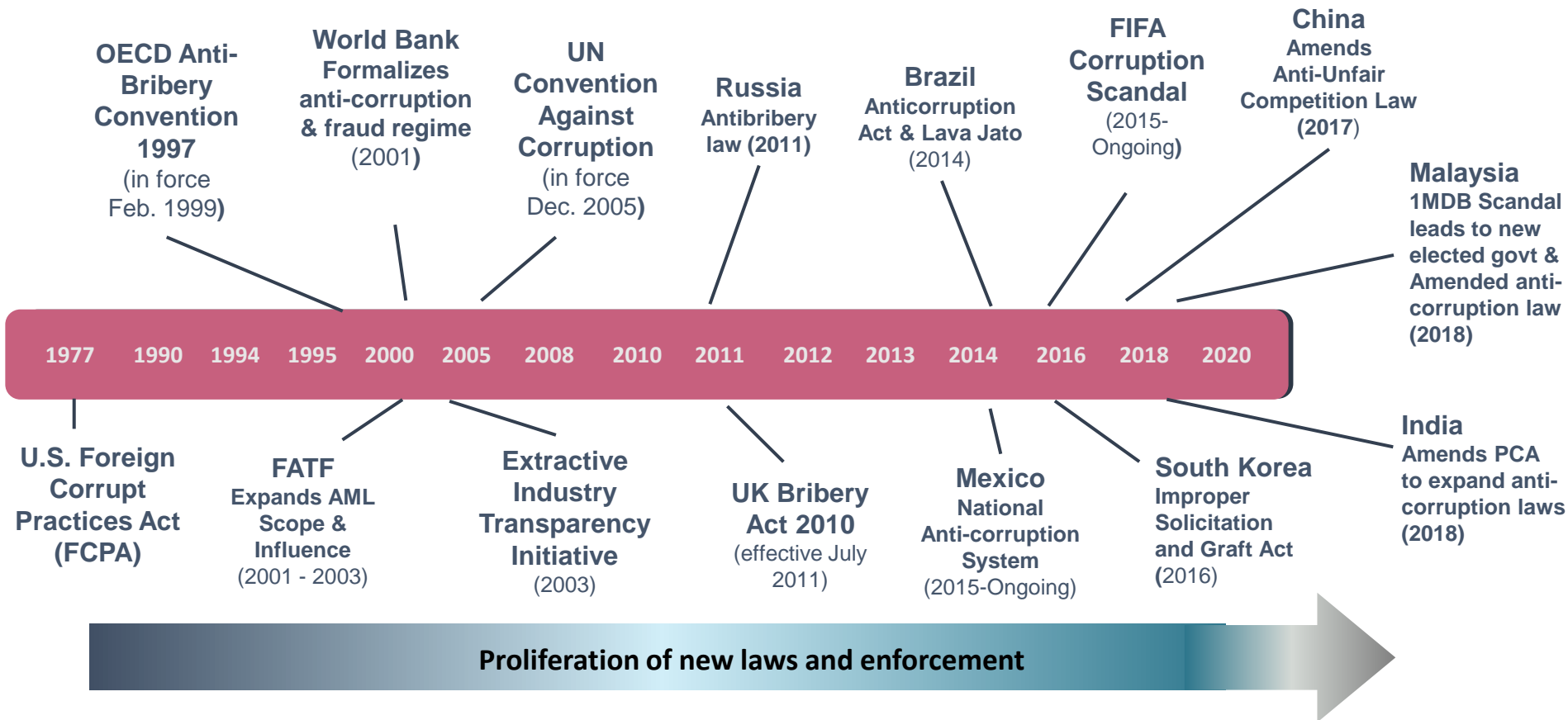
- Continued strong U.S. and UK enforcement
- New national laws and enforcement around the world
- Robust enforcement by multilateral development banks
- AML and anti-corruption coordination across jurisdictions



Evolution of Anti-Corruption Laws



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The Pandemic Risk Landscape



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The Coming Wave of Enforcement

- Voters and populations are pushing to address corruption in places where it previously was tolerated. Pandemic may intensify demand for accountability.



Key Anti-Corruption and AML Rules



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Long Arm of U.S. Law

- Foreign Corrupt Practices Act (FCPA)
 - Anti-Bribery Provisions
 - Accounting Provisions (Books and Records)
- Travel Act and Wire Fraud
 - Travel Act and state anti-bribery laws can criminalize commercial bribery
- Criminal AML Laws
 - 18 U.S.C. §§ 1956 & 1957
- Regulatory AML Laws
 - Bank Secrecy Act / USA PATRIOT Act



Key Anti-Corruption and AML Rules



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Long Arm of U.S. Law

- Jurisdiction over non-U.S. companies
 - Issuers of U.S. securities
 - Activity by persons in the United States
 - Dollar transactions through U.S. financial system
 - Phone, email, internet communication to, from or through the U.S.
- Local partners, agents, representatives of persons subject to U.S. jurisdiction
 - Conspiracy
- Looking the other way or avoiding knowledge can be criminal – “Conscious avoidance” and “willful blindness”



Key Anti-Corruption and AML Rules



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Other National Laws

- UK Bribery Act
- Chinese law
- Large number of statutes in developing countries

World Bank and Multilateral Development Banks

- Sanctions and debarment rules target corruption and fraud
- Debarred companies can be cross-debarred for all development banks
- Government contracts and procurement with national governments that are funded in whole or in part by multilateral development banks can be subject to sanctions and debarment rules

China in Focus

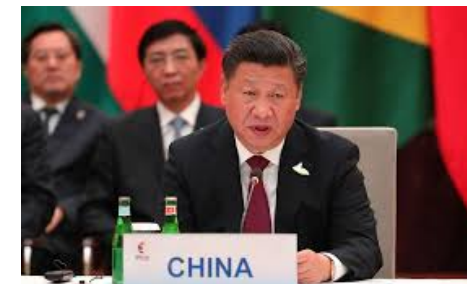


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World's Largest Manufacturer and Key Sourcing Market

- Requests for bribes or “red envelopes” can be common, but China is working to crack down on bribery in government and society
- Expect China and western governments to support prosecuting companies that paid bribes in China during the pandemic (rare area of agreement)
- What do you need to know?

A report from the front lines.



China in Focus



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World's Largest Manufacturer and Key Sourcing Market

- Anti-Unfair Competition Law (Commercial Bribery)
- Criminal Law Liability (Bribery to Public Officers + Commercial Bribery)
- Frequent Updates / Changes to the Rules for Exports of Medical Equipment



China in Focus



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Compliance Suggestions for Chinese Market

- Evaluate local partners, agency relationships, suppliers
- Formulate and maintain Compliance Policies specific for China (applicable to both own employees and agents)
- Monitor development of local policies and rules
- Commission -- Not all payments or benefits are prohibited by Chinese law, but permitted benefits are subject to conditions



Risks for Public Companies View from the SEC



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SEC Enforcement Outlook

- Expect vigorous enforcement
- “Broken windows” theory
- Expectation of political pressure and public outcry (see enforcement actions following 2008 recession)

Issuers of U.S. Securities

- Books and Records
- Violations do not have to be tied to bribery
- No materiality requirement
 - “In reasonable detail” and the “prudent officials” standard

Risks for Public Companies View from the SEC



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Compliance Best Practices in the Pandemic

- Address challenges posed by telework
- Examine disclosure controls and procedures, and train employees accordingly
 - Consider appointing a special committee to review COVID-19 related disclosure risks
- Consider implementing additional internal controls regarding approval of high-risk transactions
- Do *something* to show enforcement authorities that the company is proactive

COVID-19 (Coronavirus)

If you have questions about how the novel coronavirus impacts you or your business, please contact us.

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