


# **ETHICS AS AN ENABLER FOR GLOBALISATION**

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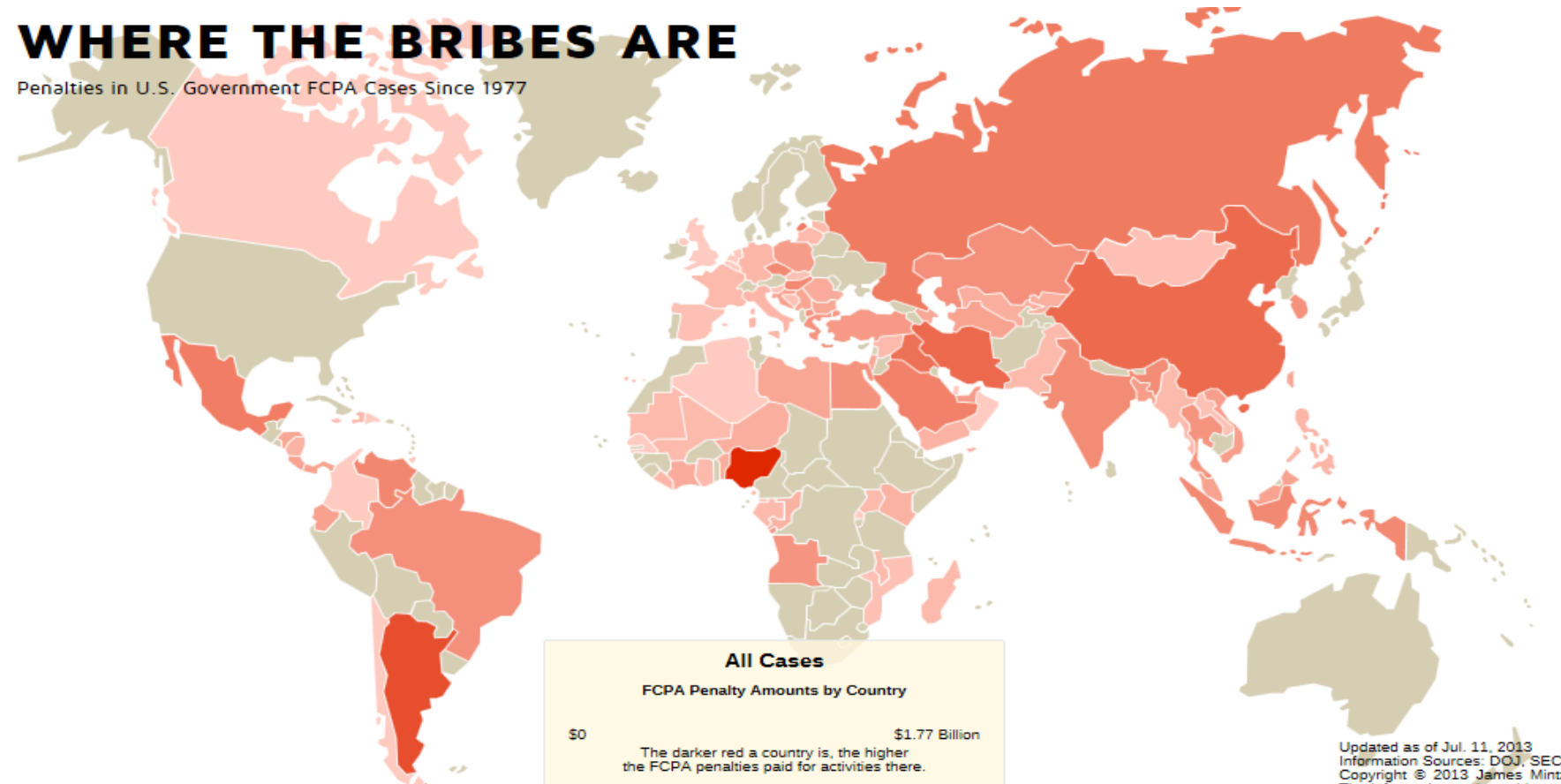
# Current World View

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- Global Perception of Asia
  - Peculiarities of doing business
  - Paying a bribe is endemic – almost legal
  - How do we find an ethical partner
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# WHERE THE BRIBES ARE

Penalties in U.S. Government FCPA Cases Since 1977



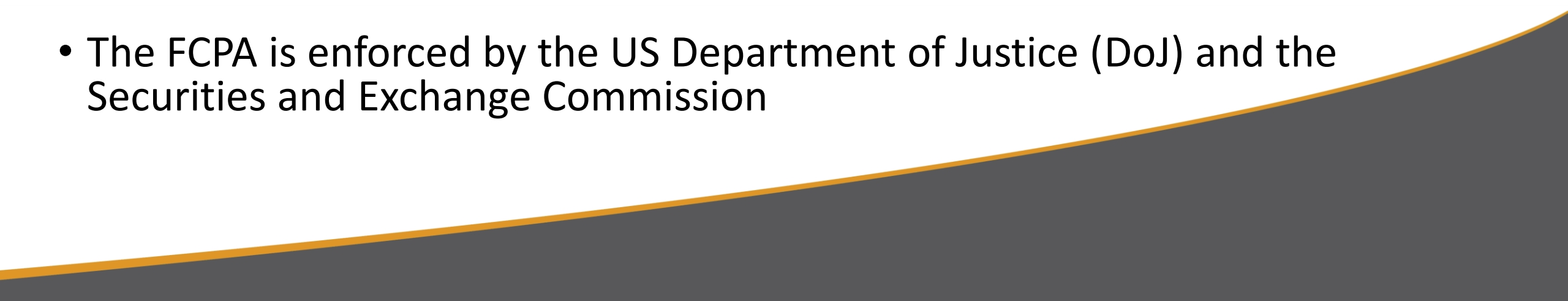
# What Companies need to know

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- Global regulations are applicable to everyone who wants to business internationally.
  - Foreign companies are looking through a magnifying glass
  - The FCPA and The UKBA – DOESN'T APPLY TO US
  - YES IT DOES
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# What is The FCPA

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- The Foreign Corrupt Practices Act (FCPA) was introduced in the United States in 1977, with the intention of influencing the way American organizations conducted business overseas
  - The FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business or gaining an unfair advantage
  - The FCPA is enforced by the US Department of Justice (DoJ) and the Securities and Exchange Commission
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# FCPA – Implications

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- Investors and partners- zero error and water tight agreements
  - Intense competition
  - Global marketplace – Global business practices
  - Old reward systems --- Are Illegal now
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# The UKBA

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- Bribery Act 2010 Came into effect on 1 July 2011

Covers bribery both in UK and overseas

- 2 general offences:
  - Offering, promising or giving an advantage
  - Requesting, agreeing to receive, or accepting an advantage
- Discrete offence of bribery of a foreign public official
- Corporate offence of failing to prevent bribery
- Individuals: up to 10 years' imprisonment and/or unlimited fine
- Corporates: unlimited fine
- Confiscation
- Procurement

# Worldwide Jurisdiction

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Bribery Act has a wide scope and an reach (broader than the FCPA) and applies to:

- Any individual ordinarily resident in the UK (whether or not a British national) with respect to acts of bribery committed anywhere in the world
- THE BRIBERY DOES NOT HAVE TO TAKE PLACE IN THE UK
- Any company incorporated in the UK or any company or partnership carrying on business in the UK (e.g. through a permanent establishment, subsidiary or other operation) even if the offence was committed outside the UK
- BRIBES DO NOT HAVE TO BE PAID BY A UK COMPANY



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**CONSEQUENCES OF  
NON-COMPLIANCE**

**ARE MASSIVE**

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# The FCPA SPARES - NO ONE

AVON  
the company for women

Panasonic®

Goldman  
Sachs

TimeWarner  
TATA

HALLIBURTON



accenture

SONY



DREAMWORKS  
SKG



ERICSSON

TESCO

OLYMPUS



SIEMENS



NOVARTIS

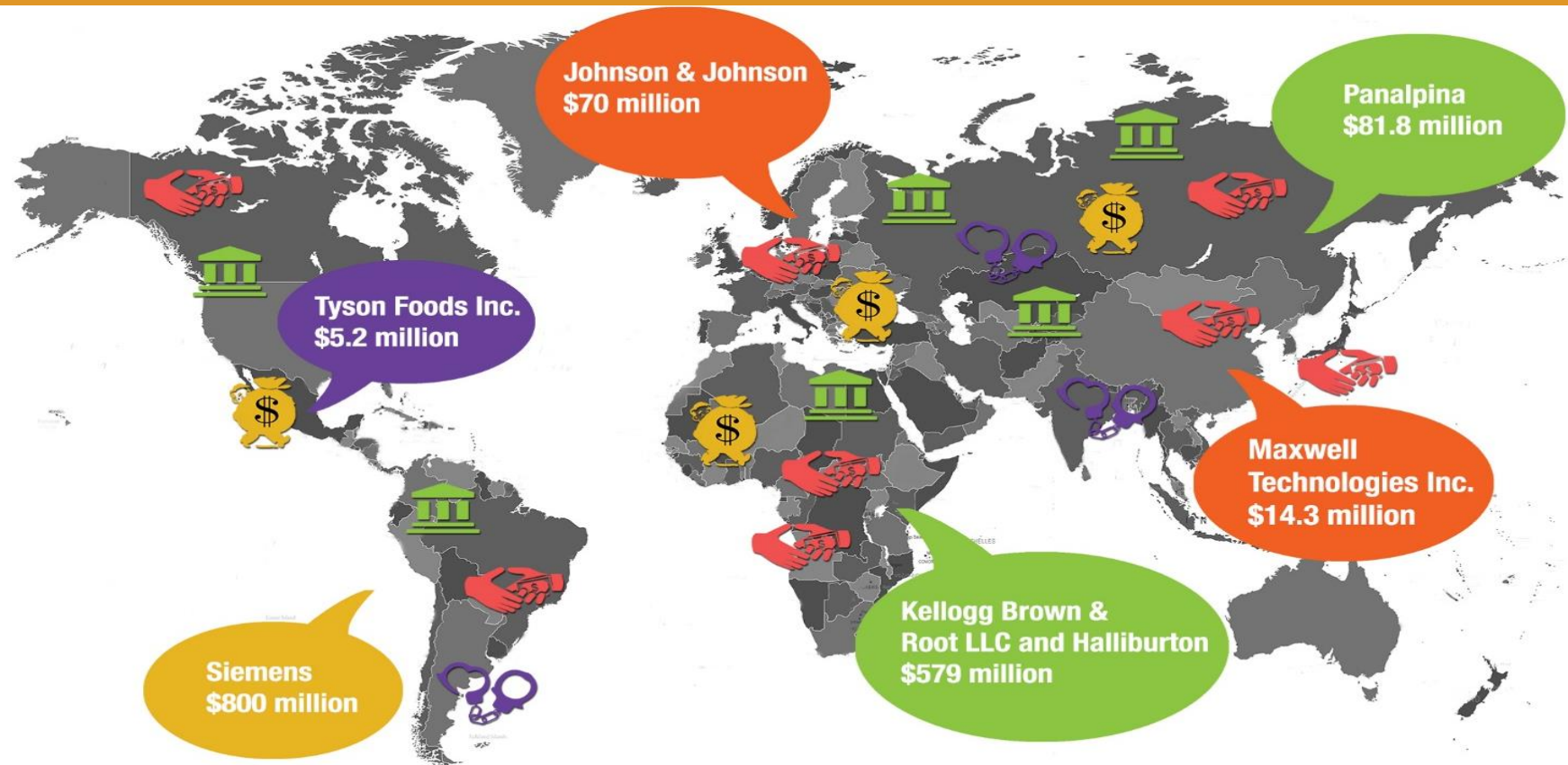
# FCPA- It doesn't matter if

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**The deed was performed by**

- **Non-US business entities,**
- **Among non-US business entities,**
- **By non-U.S. individuals**
- **And outside of US territory**

# Bribery & Corruption – A global concern



# The Cost of Non-Compliance

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- The largest single fine thus far under the FCPA Act was **\$800 million** to **Siemens** in 2008.
- **Walmart Inc.** stated that it has spent **\$439 million** in legal fees and other costs associated with FCPA investigations and improving its global compliance protocol.
- Three **GlaxoSmithKline** executives are currently facing **jail time** in China, under local bribery and corruption laws.
- There are currently over 100 ongoing FCPA corporate investigations globally, this number is increasing steadily.

**\$5b\***

\* More than 5 billion has been paid globally to the SEC for FCPA violations since 2008 alone

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**Chances of getting caught  
have gone from 10% to 90%**

**Penalties, Fines, Jail Time**



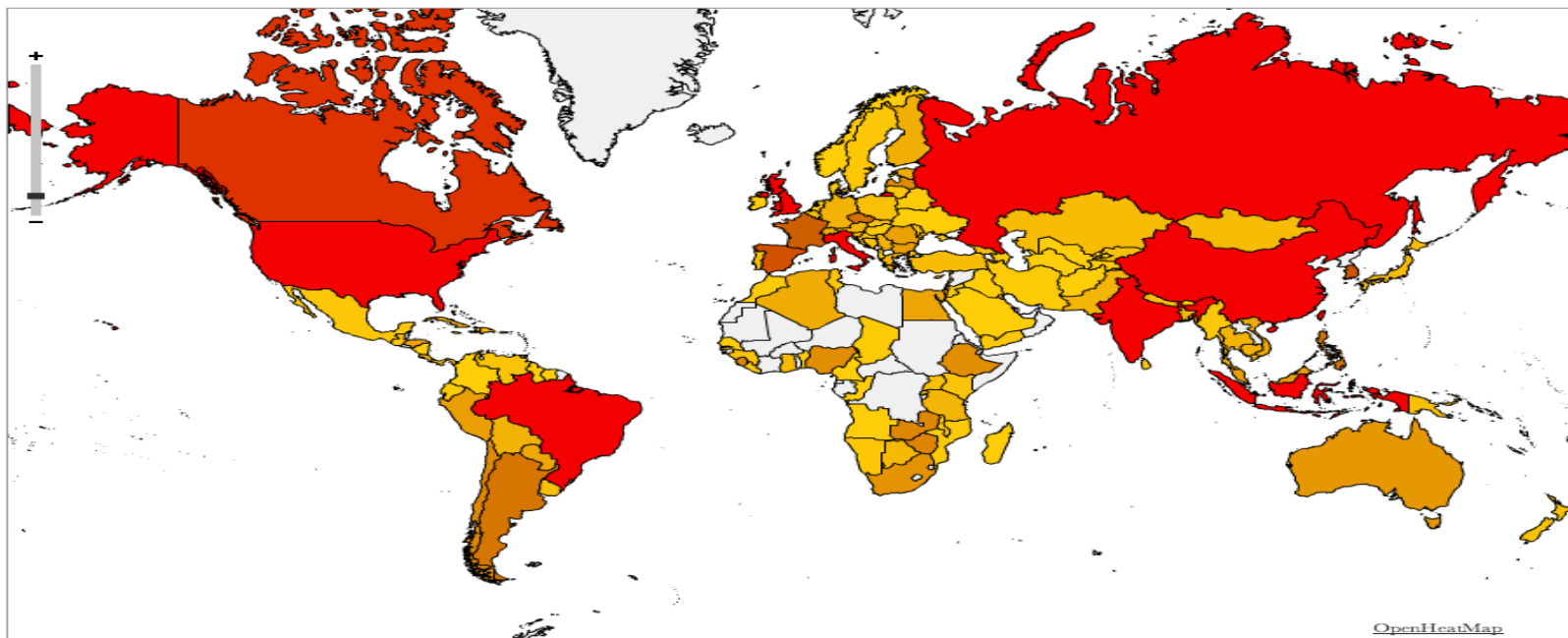
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**Senior management and boards are going to be held more accountable by shareholder advocacy groups, media, NGOs, enforcement agencies**



# Growing Levels of Enforcement Globally over 2,600 active cases

Enforcement Records - 1 Oct 2012 To 1 Oct 2013



Value 0.00 33.0 66.0

Map created by ethiXbase





# **Defenses That Don't Work**



# FCPA Permissible Payments

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- Facilitation payments
- Promotional Payments
- Payments permitted under the written laws of the host country.



## Defenses from Fantasy-Land

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Everyone pays bribes in this  
country



## Defenses from Fantasy-Land

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Don't look at me.  
The JV partner / agent /  
foreign subsidiary did it



## Defenses from Fantasy-Land

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Only big companies get into  
FCPA trouble. No one cares  
about little fish like us



## Defenses from Fantasy-Land

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My supervisor approved it



## Defenses from Fantasy-Land

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We had no choice – pay up or  
lose the deal



## Defenses from Fantasy-Land

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That's extortion, not bribery





## Defenses from Fantasy-Land

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We can't control what our  
agent does on his own time,  
with his own money



## Defenses from Fantasy-Land

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A hundred tiny bribes do not  
add up to one big bribe



## Defenses from Fantasy-Land

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We have to pay bribes to do  
business here



## Defenses from Fantasy-Land

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The U.S. Government doesn't  
really expect us to leave, does  
it?



## Defenses from Fantasy-Land

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I was outside the U.S. and only  
used foreign bank accounts



## Defenses from Fantasy-Land

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It's not fair..





# Gift-Giving



# Gift Giving

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- Why so much tension?
- How to handle gifts, entertainment and travel to government customers?





# Guidance

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Guidance from DOJ / SEC Resource Guide to the FCPA:

- Gift is given openly and transparently
- Gift is properly recorded in books and records
- Gifts given only to reflect esteem or gratitude
- Gifts are permitted under local law

# The Ten Key Hallmarks of an Effective Compliance Program according to the DOJ and SEC Guidance

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- 1) **Commitment from Senior Management and a clearly articulated policy against corruption;**
- 2) **Code of Conduct and Compliance Policies and Procedures;**
- 3) **Oversight, Autonomy, and Resources;**
- 4) **Risk Assessment;**
- 5) **Training and Continuing Advice;**
- 6) **Incentives and Disciplinary Measures;**
- 7) **Third Party Due Diligence and Payments;**
- 8) **Confidential Reporting and Internal Investigation;**
- 9) **Continuous Improvement: Periodic Testing and Review;**
- 10) **Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration.**



**Thank You**