

FCPA Risk Overview

ASEAN-5 Countries

Indonesia • Malaysia • Philippines • Thailand • Vietnam





Due Diligence | Investigations | Advisory

Early 2022 has seen several economies have gradually opening with the shift in their management of the COVID 19 pandemic. ASEAN 5 are on course for continued economic recovery with most reliable regional projections anticipating expanded GDP in 2022. With this ASEAN's economic outlook remains positive, locking in Southeast Asia's status as a key engine for global growth into the foreseeable future. This is on contrast to new risks emerging within the developed economies of Europe from the Ukraine-Russia conflict, aggressive sanctions on Russia inverting growth in the CIS, and closures across China with the reemergence of COVID-19 variants there. Within ASEAN, governance challenges like corruption persist. This means that along with a return to continued opportunity comes elevated business risks from bribery and corruption. To assist our clients, PSA has compiled a dataset of corruption indicators for the "ASEAN-5" countries to place business related risks in context.

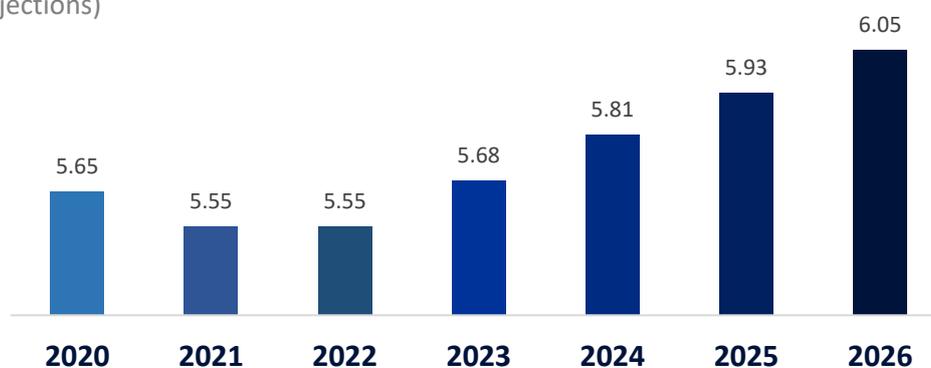
Continuing Growth

The ASEAN-5, made up of Indonesia, Malaysia, the Philippines, Thailand, and Vietnam, represent the more mature of ASEAN's middle-income economies and are also its largest by purchasing power parity (PPP). Some assessments predict ASEAN as a whole to become the world's fourth largest economy by 2030, after the EU, the US, and China. Despite shocks from the global COVID-19 pandemic, ASEAN-5 economies are expected to recover by 2023 and continue to grow in the coming years.

Share of Global GDP (PPP) ASEAN-5

ASEAN – 5 Countries will have a growing share of global GDP.

(IMF projections)

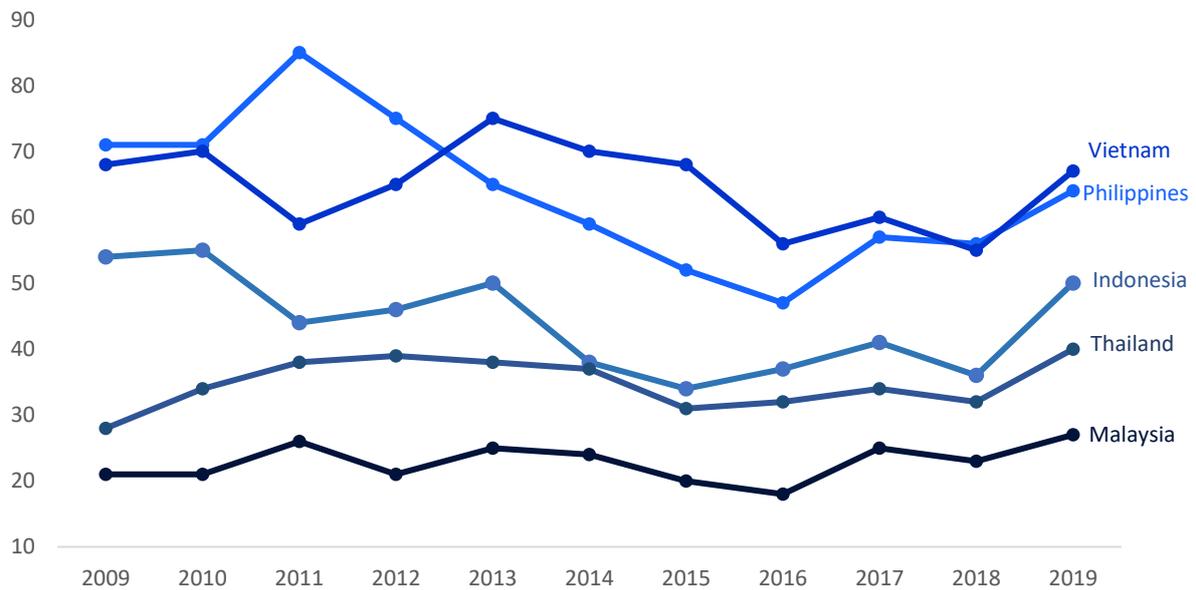


Business Environments within the ASEAN-5 Continue to Improve

The most up to date Global competitiveness data rankings data from 2019 shows an upward trajectory in business climate indicators for ASEAN-5 countries. Although the competitiveness data rankings have been paused since 2020, we believe this upward movement will be present in 2023. We note that improving scores by country are typically attributable to the simplification of tax codes and tax payment processes as well as reduced regulatory burdens for registering new companies something that has been less of a priority as the regional economies have grappled with aspects of the pandemic.

As with many governance indicators, Malaysia has consistently led the group in terms of business environment. Malaysia moved from 15th to 12th in the World Bank’s Doing Business world ranking in 2020.

World Economic Forum Global Competitiveness Index, Global Rankings



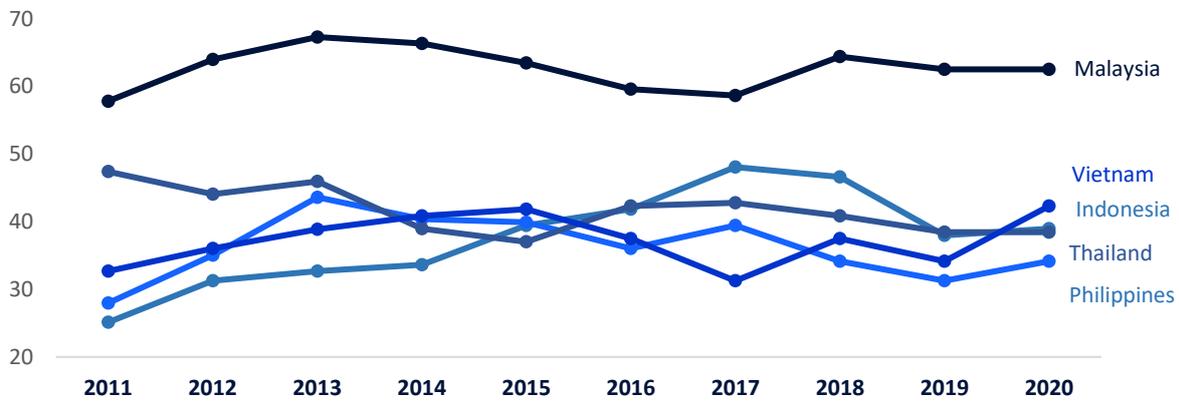
...Yet Elevated Levels of Corruption Persist

While the business environment has continued to improve time series data from the World Bank’s Worldwide Governance Indicators as well as Transparency International’s Corruption Perceptions Index show only slow improvement in the region in terms of the control of corruption. This trend typically reflects cycles of reform and backsliding, as the ASEAN-5 countries largely hover below global averages for corruption levels. By contrast, Malaysia has become the strongest performer in control of corruption, particularly after its recent high-level corruption scandals notwithstanding.

This report provides an overview of FCPA and more general corruption risks for the ASEAN-5 economies: **Indonesia, Malaysia, the Philippines, Thailand, and Vietnam**. For these five countries, the two most widely used measures of public corruption are in broad agreement as to the levels of corruption in each country. Transparency International’s Corruption Perceptions Index and the Control of Corruption indicator from the World Bank’s Worldwide Governance Indicators show that most countries in this group are clustered around or just below the global median of performance. This means these countries would still need to actively seek to improve control of corruption. The ASEAN 5 exception is Malaysia, which is a clear outlier as it is listed as and among the highest performing countries in the world in terms of governance and control of corruption.

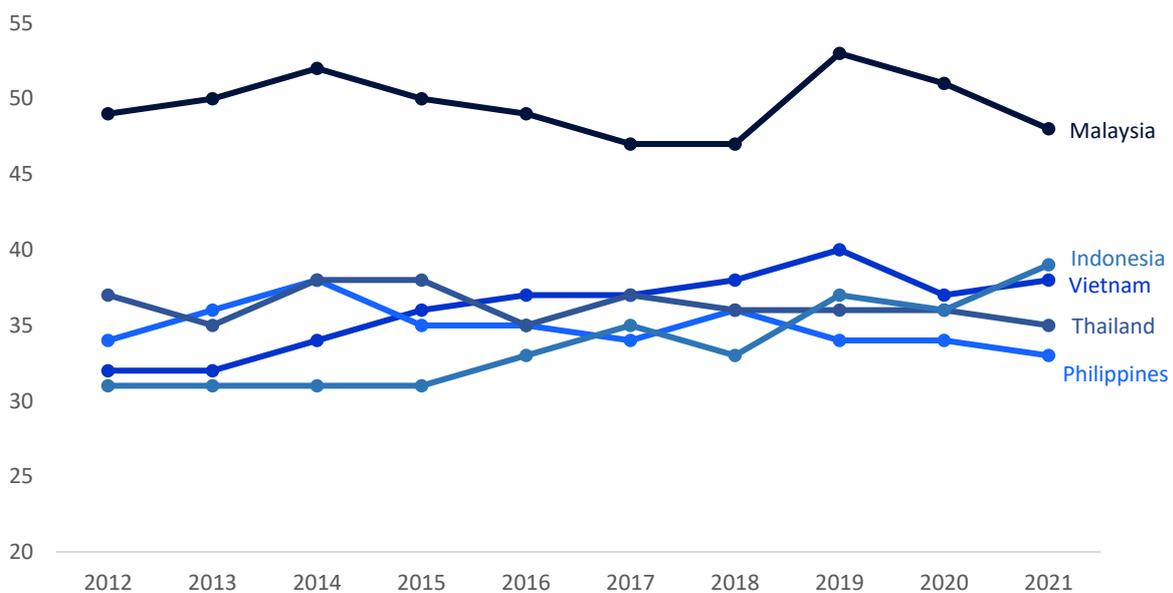
Control of Corruption, World Bank Worldwide Governance Indicators

Best=100 | Median=50



Transparency International Corruption Perceptions Index Score

Best=100 | Median=39



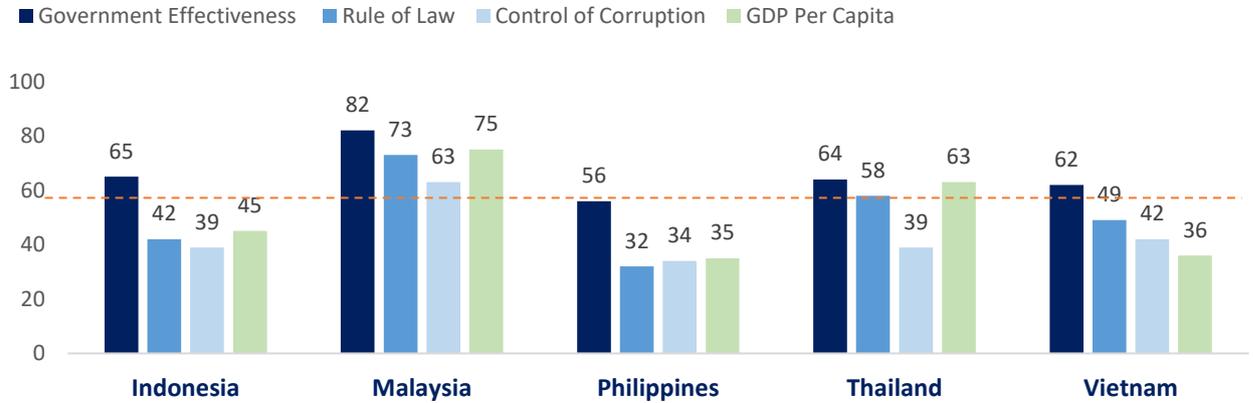
Benchmarking Control of Corruption and Government Performance

Throughout the world, good governance and economic growth are mutually supporting and correlate highly with one another. Because of this, comparing GDP per capita with key governance metrics provided by the World Bank’s Worldwide Governance Indicators can provide a snapshot of whether a country is an underperformer in comparison to its level of development.

In the chart below, GDP data has been converted to percentile rank. This means that the theoretical median country would have scores of 50 on all four indicators below. Because of the high correlation between GDP per capita and WGI scores, comparably wealthy countries should present comparable

levels of government performance. Indonesia and the Philippines display large gaps between economic and governance performance and can be seen as underperformers.

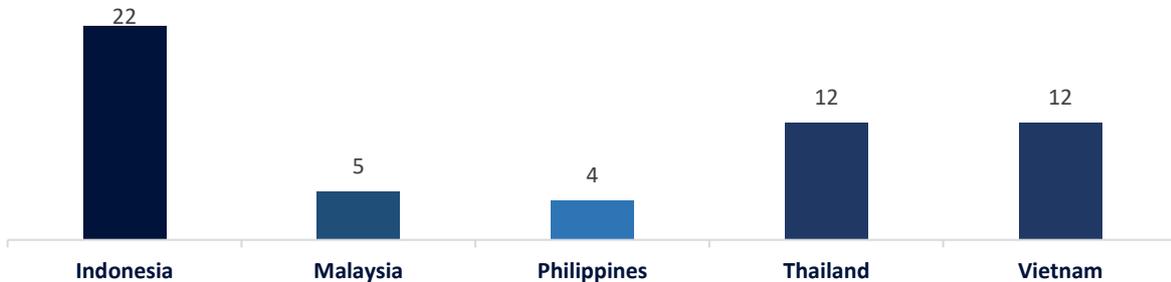
Governance Indicators vs GDP Per Capita



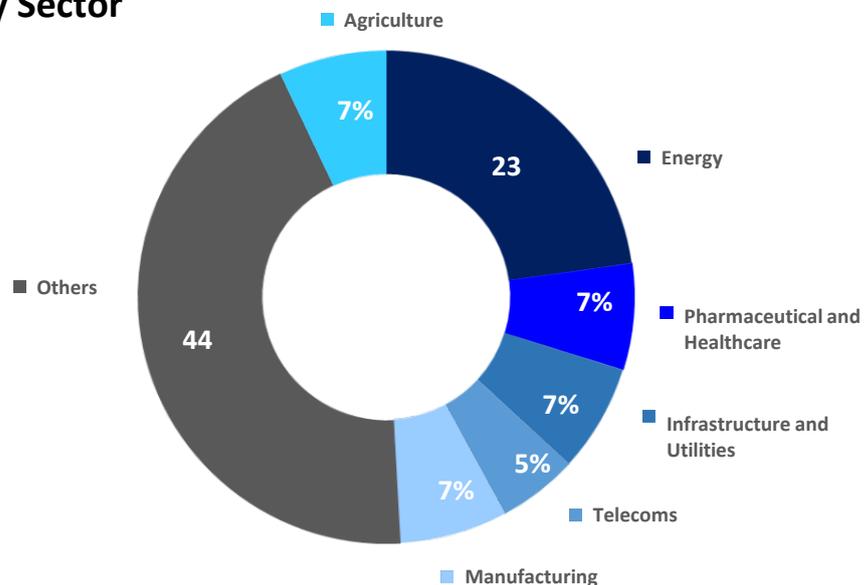
FCPA Enforcement

FCPA enforcement in the countries surveyed here has focused heavily on the energy sector. The energy sector is one of the most penalized sectors elsewhere in the world, with energy sector related cases making up approximately one-third of all FCPA case worldwide.

Total FCPA cases by country



FCPA Cases by Sector ASEAN-5



Indonesia

22 Total FCPA Cases

The history of FCPA enforcement involving Indonesian ventures shows a clear pattern of activity in the manufacturing sector, where seven of twenty-two cases were centered, as well as pervasive bribery to secure business with SOE clients in several other sectors. Indonesian business is dominated by large conglomerates run by families that often have high level political connections or include public officials. A relatively high percentage of Indonesia's largest firms are SOEs. State-economy connections are still colored by the legacy of the Suharto regime, with many prominent businesses in operation today having established themselves during his rule. Close ties between large companies and government officials are common. The boards of companies in medical, oil and gas, and other industries often include PEPs or former military figures. Corruption risks in transactions related to land use are high.

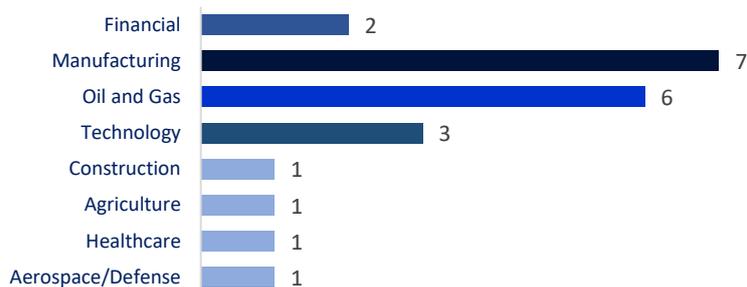
Corruption Indicators

| | Indonesia | G7 Average |
|---|-----------|------------|
| Transparency International Corruption Perceptions Index | 38 | 71 |
| World Bank Control of Corruption Score | 39 | 87 |
| World Justice Project Absence of Corruption Score | 40 | 77 |

**All indicators are scores/100 or are percentile ranks, 100 = best. Some scores have been modified accordingly.*

1-33 34-66 67-100

Total FCPA Cases by Sector



Representative FCPA Cases of 22 Total Case Groups

Monsanto

Between 1997 and 2002, Indonesian affiliates of the agribusiness company allegedly bribed numerous Indonesian government officials or members of their families. These alleged bribes were meant to obtain unfavorable political or regulatory decisions affecting the company's business. Monsanto paid a USD 500,000 civil penalty and 1 million criminal penalty to resolve the case.

Allianz

The German insurance company's local subsidiary, Utama, allegedly made improper payments to employees of state-owned enterprises to obtain or retain business between 2001 and 2008. Allianz allegedly failed to halt the use of slush funds for paying bribes despite complaints and audit results indicating the problem. Allianz settled with the SEC for more than USD 12 million.

Diebold

The technology company's local agents and subsidiaries allegedly provided gifts or payments to employees of Indonesian state-owned banks to secure business between 2005 and 2010. In 2013 the company resolved the matter by settling with the DOJ and the SEC for a combined USD 48 million.

Malaysia

5 Total FCPA Cases

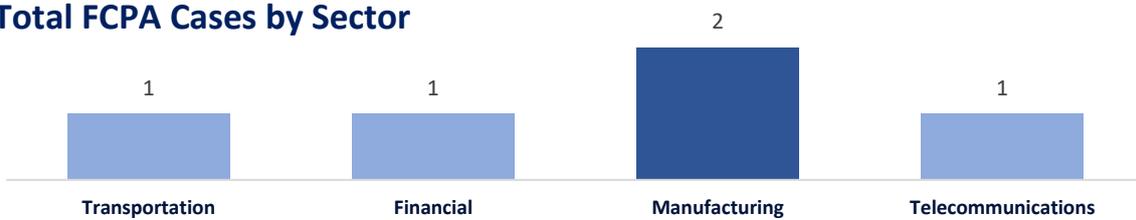
Its recent high-profile corruption scandals notwithstanding, Malaysia outperforms most of ASEAN and all of the ASEAN-5 and performs at or above global averages in many dimensions of governance. (Some datapoints in this survey, however, may be lagging behind current events.) There is no discernible sectoral pattern in the distribution of FCPA cases. Despite its relatively high marks for governance, corruption is a high-profile political and social issue in the country today. Scandals involving the misappropriation of huge amounts of public money have been making headlines for the last few years, including the ongoing 1MDB investigations and the 2018 arrest of former Prime Minister Najib Razak for corruption and embezzlement charges.

Corruption Indicators

| | Malaysia | G7 Average |
|---|----------|------------|
| Transparency International Corruption Perceptions Index | 48 | 71 |
| World Bank Control of Corruption Score | 63 | 87 |
| World Justice Project Absence of Corruption Score | 58 | 77 |

**All indicators are scores/100 or are percentile ranks, 100 = best. Some scores have been modified accordingly. 1-33 34-66 67-100*

Total FCPA Cases by Sector



Representative FCPA Cases of 5 Total Case Groups

Goldman Sachs

This ongoing case relates to the 1 Malaysian Development Berhad (1MDB) scandal involving a government fund from which billions of dollars were allegedly misappropriated. US regulators have brought charges against three individuals associated with Goldman Sachs for alleged FCPA or money laundering violations. Goldman Sachs executed three bond offerings for 1MDB and its three employees allegedly bribed Malaysian government officials to further a massive embezzlement scheme.

Tyco

In a 2012 Settlement, Tyco paid nearly USD 27 million to resolve charges that its subsidiaries in numerous countries and sectors—including Tyco Fire, Security & Services Malaysia SDN BHD—had engaged in numerous bribery schemes between 2006 and 2009.

Alcatel

The telecom company allegedly used local subsidiaries as part of a concerted global strategy to bribe officials to obtain or retain contracts. Consultants engaged by these subsidiaries allegedly distributed more than USD 8 million in unaccounted funds to officials in Malaysia and other countries.

Philippines

4 Total FCPA Cases

Corruption is a continuing problem in all areas of business and public administration in the Philippines. Corruption scandals involving elected officials, the police, and the judiciary are common issues in Philippines politics, and solicitations for facilitation payments for licenses and other government services are pervasive. Despite recent policy attempts to remedy the problem, significant amounts of red tape increase opportunities for government intervention in business. Despite, this, the Philippines simply lacks many of the factors that raise FCPA risks among its neighbors, such as high levels of state ownership of businesses, a universal government health service, and high levels of new oil and gas development.

Corruption Indicators

| | Philippines | G7 Average |
|---|-------------|------------|
| Transparency International Corruption Perceptions Index | 33 | 71 |
| World Bank Control of Corruption Score | 34 | 87 |
| World Justice Project Absence of Corruption Score | 44 | 77 |

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Total FCPA Cases by Sector



Representative FCPA Cases of 4 Total Case Groups

BHP Billiton

During the course of a dispute with a JV partner, the mining company allegedly offered an expenses-paid trip to the 2008 Beijing Olympics to the government official responsible for making a key decision in the dispute. The official accepted the offer and decided in BHPB’s favor. This exchange was part of a broader program in which BHP was alleged to have violated books & records provisions of the FCPA. The issue was resolved with a USD 25 million civil penalty.

Con-Way

The logistics company was a 55% owner of a local firm which between 2000 and 2003 allegedly paid approximately USD 400 thousand to officials of the Philippines Bureau of Customs, the Philippine Economic Zone, and several state-owned airlines operating at Philippines airports. Employees of the state-owned airlines were allegedly complicit in helping the subsidiary cut costs by misallocating airline resources. The company resolved books & records charges with a USD 300 thousand settlement.

InVision

In 2001 the company sold two airport explosives detectors to Philippines officials. Subsequent to this sale, the company’s Philippines sales agent was paid a large sales commission despite having indicated that a portion of this commission would be provided as a kickback to the authorizing public officials in the sale. The company and one of its executives ultimately paid a combined USD 2 million to resolve criminal and civil complaints.

Thailand

12 Total FCPA Cases

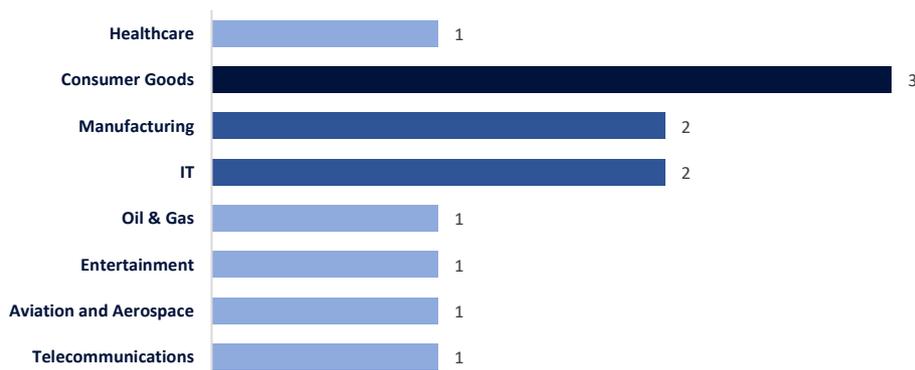
With below average overall indicators for transparency and a high rate of FCPA enforcement in proportion to the size of the economy, Thailand presents elevated third-party corruption risks. FCPA enforcement has targeted transactions in a variety of sectors which involved bribes paid to secure sales to government agencies and to obtain regulatory concessions. The current government assumed control in 2014 with the ostensibly purpose of curbing widespread corruption and has intensified some anticorruption efforts. Anecdotal evidence suggests corruption is declining, but such a decline is not reflected in any of the composite indicators surveyed in this report. Transparency International notes an overall bribery rate of 20% in a survey done in 2020. 55% percent of Thais in the 2020 survey consider that corruption has continued to increase in the previous 12 months. Thailand remains one of the highest bribery rates in Asia and second to Indonesia among ASEAN-5.

Corruption Indicators

| | Thailand | G7 Average |
|---|----------|------------|
| Transparency International Corruption Perceptions Index | 35 | 71 |
| World Bank Control of Corruption Score | 39 | 87 |
| World Justice Project Absence of Corruption Score | 47 | 77 |

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Total FCPA Cases by Sector



Representative FCPA Cases of 12 Total Case Groups

Diageo

The Thai subsidiary of the liquor producer and distributor allegedly paid USD 12,000 per month to retain the services of a consultant who was also a government official between 2004 and 2008. This official successfully lobbied on the company’s behalf regarding multiple regulatory issues. The company paid USD 16 million to resolve this and related allegations in India and South Korea.

Dimon

The Virginia-based tobacco company allegedly paid more than USD 1 million to officials of the government-operated Thailand Tobacco Monopoly in order to secure business between 2000 and 2004. The company paid more than USD 20 million in penalties and disgorgements in 2010 to resolve these charges among others in several countries.

Green Businesses

American entrepreneurs Gerald and Patricia Green allegedly paid USD 1.8 million in kickbacks on USD 14 million in contracts with the Tourism Authority of Thailand between 2002 and 2007. The kickbacks were reportedly funneled to associates of a Thai governor who served as senior official at TAT. A 2009 indictment resulted in convictions and prison time for both individuals.

Vietnam

12 Total FCPA Cases

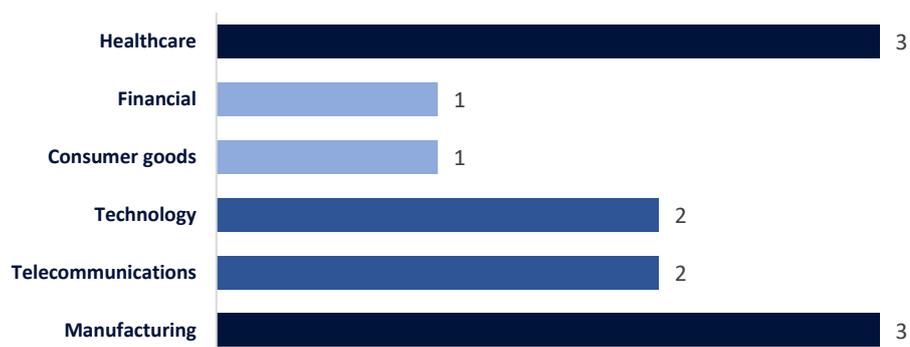
With the lowest indicators for transparency in this group and a high rate of FCPA enforcement in proportion to the size of the economy, Vietnam presents high third-party corruption risks. While Vietnam's economy is growing fast and its leadership has managed to beat expectations on the World Bank's government effectiveness score, corruption indicators do not show any clear positive trend. Vietnam is actively divesting state-owned enterprises and has recently embarked on an aggressive anticorruption campaign targeting top executives. However, corruption remains pervasive and it will take time for these policies to make an observable difference. Global Corruption Barometer survey in 2020 show that 64% of survey participants in Vietnam still think government corruption is still a problem and that 39% believe it has increased in the previous twelve months.

Corruption Indicators

| | Vietnam | G7 Average |
|---|---------|------------|
| Transparency International Corruption Perceptions Index | 39 | 71 |
| World Bank Control of Corruption Score | 42 | 87 |
| World Justice Project Absence of Corruption Score | 41 | 77 |

**All indicators are scores/100 or are percentile ranks, 100 = best. Some scores have been modified accordingly. 1-33 34-66 67-100*

Total FCPA Cases by Sector



Representative FCPA Cases of 12 Total Case Groups

Bio-Rad Laboratories

Singapore and Thai subsidiaries of the medical diagnostics company allegedly paid unlawful payments to Vietnamese government officials to obtain business between 2005 and 2010. The company paid more than USD 50 million to resolve charges with the DOJ and the SEC for these allegations along with similar alleged behavior in Russia.

Aon Corporation

The insurance and reinsurance company's subsidiary allegedly granted a 30% commission to a third-party agent to secure "information and services" in support of Aon's contract with Vietnam Airlines, an SOE. Records reportedly showed that this agent did not provide legitimate services but transferred this money to unspecified other parties. In 2011 Aon entered into an agreement with the SEC to resolve these allegations along with other practices in several countries between 1983 and 2007.

Nexus Technologies

A distributor of technologies with military or government applications allegedly paid USD 150K in bribes in Vietnam to secure government contracts between 1999 and 2008. Indictments brought by the DOJ in 2008 and 2009 for numerous bribery and money laundering charges resulted in jail time for its executives and the dissolution of the company.



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