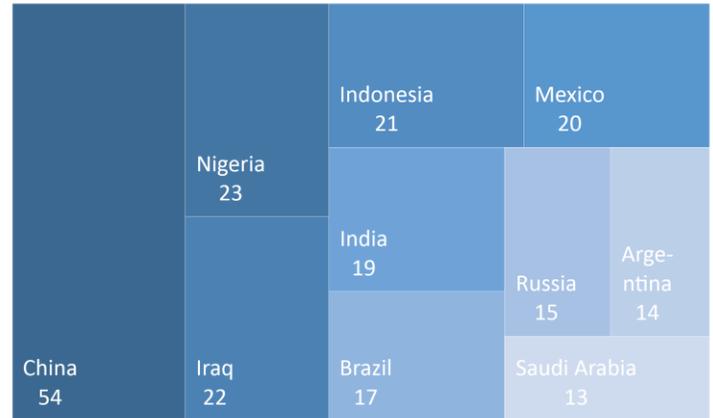


The Growing Reach of Anticorruption Enforcement

Global anticorruption enforcement efforts have steadily increased in the last several years. The United States' **FCPA** has been joined by the 2010 **UK Bribery Act** and the 2016 French **Sapin 2** law. Each law claims extensive extraterritorial jurisdiction.

While there are key differences between these three laws, they all have a global scope and enforcers share similar approaches to compliance guidelines and enforcement practices. Because of this, the extensive FCPA enforcement history provides a useful dataset for understanding the global distribution of third-party corruption risks.



Top 10 Locations of FCPA-sanctioned practices, all sectors

FCPA Enforcement in the Healthcare Sector

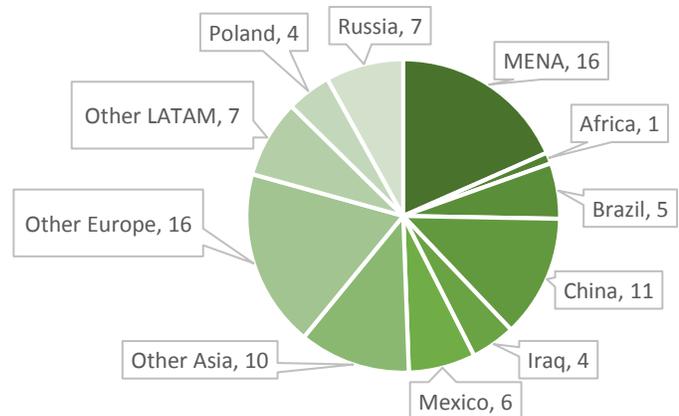
The pharmaceutical, medical device, and healthcare technologies industries face very high levels of FCPA enforcement. With 59 of approximately 500 total FCPA complaints, healthcare is the second most penalized sector globally. Healthcare companies face special challenges. US enforcers treat administrators, physicians, and others in state-run hospital systems as "foreign officials," meaning that some common marketing activities may be considered bribery in key countries around the world. The sector is also highly dependent on government approvals throughout the product cycle, multiplying government transaction risks. Local third-party distributors are common in the sector and create additional exposure.

FCPA cases have named many types of HCPs in many jurisdictions "foreign officials"

- Employees of government owned hospitals
- Employees of government-controlled hospitals
- Employees of government run labs
- Employees serving in a public/private partnership

Locations and Incidence of FCPA Sanctioned Practices

source: Stanford University Law School



Country Focus: China

China continues to give rise to a significant share of FCPA enforcement due to the size and complexity of state involvement in the economy. Most Chinese healthcare practitioners (HCPs) will be considered "foreign officials" by US regulators. China also has a high number of SOEs in related sectors which add political exposure risks. Providing gifts, travel, and entertainment to Chinese HCPs, while sometimes considered customary business practices, have all been penalized under the FCPA. Sometimes Chinese healthcare organizations can have unexpected government connections or public purposes. This includes public health outreach organizations or university labs that receive government sponsorship or administrative oversight, as well as numerous healthcare facilities and HCPs associated with the military.

Notable FCPA Enforcement Cases in Healthcare Industries (*as reported*)

FCPA enforcement in the healthcare sector has been headlined by major cases against many of the world's largest pharmaceutical and medical device firms, including AstraZeneca, Eli Lilly, Bristol-Myers Squibb, Novartis, Novo Nordisk, Pfizer/Wyeth, and others. However, a wide variety of firms in the industry also faces elevated risks in the sector, as the following selection shows.

2014 Bio-Rad Laboratories—Singapore and Thai subsidiaries of the medical technologies company allegedly made unlawful payments to governments to obtain business. Other subsidiaries paid commissions to offshore companies that were deemed by enforcers to be incapable of providing any bribery risk presented by such payment arrangements. The total settlement was more than USD 55 million.

2014 Bruker Corporation—China-based employees of the company allegedly made payments to employees of state-owned institutions in China. Bruker is a manufacturer of medical and scientific analytical tools, including microscopes.

2012 Biomet—Subsidiaries of the orthopedic medical device company allegedly paid healthcare practitioners in multiple countries to induce the purchase of products. This allegedly included cash incentives and non-business travel. Following a consent agreement, ongoing records problems led the company to fail to prevent payments to Mexican customs officials and failed to terminate its agreement with a Brazilian distributor which was found to have paid bribes.

2009 Nature's Sunshine Products—The manufacturer of nutritional products allegedly paid customs brokers who then bribed customs officials in order to allow the company's products to enter Brazil. The company faced declining sales after some of its vitamin and supplement products were unable to meet new pharmaceutical regulations for vitamins.

2007 Immucor—The manufacturer of blood testing technologies allegedly used its Italian subsidiary to bribe a hospital director in Italy to secure an ongoing relationship. The SEC complaint alleged that the COO authorized a payment of EUR 13,000 to the director using a false invoice for "consulting services."

Recent Enforcement Trends

- The US has recently enforced "books and records" violations without alleging specific acts of bribery.
- The UKBA's Section 7 criminalizes "failure to prevent bribery."
- UKBA and Sapin 2 both have potentially greater jurisdictional reach than FCPA.
- Recent Odebrecht and Rolls Royce cases demonstrate growing international cooperation.
- US regulators increasingly refer cases outside FCPA jurisdiction to foreign governments.
- Sapin 2 imposes mandatory compliance procedures among all companies above a certain size.

Mitigating Third-Party Risks with Due Diligence

Many third-party corruption cases involve exchanges between employees of subsidiaries or third parties that escape the oversight of corporate management. FCPA, UKBA, and Sapin 2 incentivize firms to self-report violations. FCPA enforcers take proactive compliance practices into account when evaluating penalties, and Sapin 2 mandates the internal adoption of key anticorruption policies. These factors mean that the on-the-ground assessment of potential points of contact between employees, third parties, and local officials offered by due diligence reporting can mitigate risks or limit penalties.

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