Managing your Corruption and Bribery Risks when working in Brazil

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Points for Discussion

1. ***Brazil's business and regulatory environment***
2. ***The dilemma of entering high-risk areas***
3. ***Compliance program as a means for risk mitigation***

Succeed in Brazil and staying clean

“When in Rome…”

"We don’t ask questions…”

"Red tape is a nightmare there…”

“You can sell there only if you use ‘creative’ methods…”

“You need someone local with the right connections”

Brazil's business and regulatory environment

1

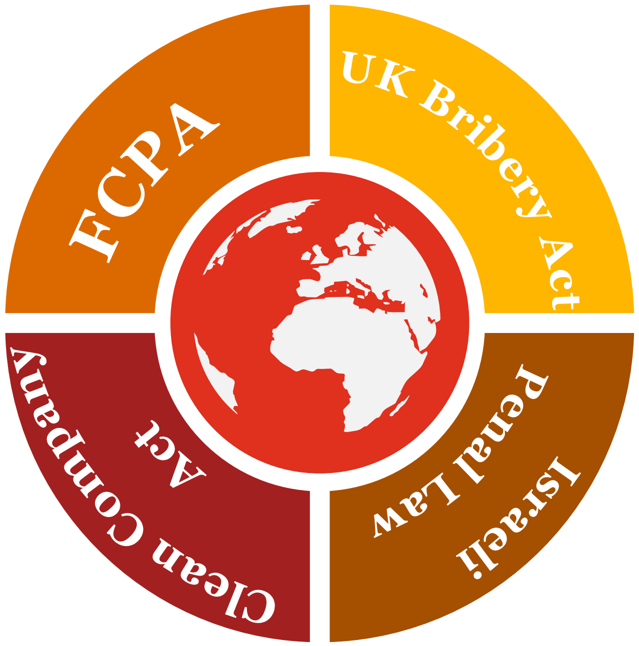
Relevant regulatory frameworks

US Foreign Corrupt Practices Act (1977)

Brazil's Clean Company Act (2014)

UK Bribery Act (2010)

Israeli Penal Law (amended in 2010)



Indices ranking Brazil's ethics and competitiveness

Brazil

TI Corruption Perception Index:	76 / 167
TRACE Matrix Index:	147 / 197
World Economic Forum Index:	138 / 140

Israel

TI Corruption Perception Index:	32/ 167
TRACE Matrix Index:	40 / 197
World Economic Forum Index:	44 / 140

Spain

TI Corruption Perception Index:	36/ 167
TRACE Matrix Index:	36 / 197
World Economic Forum Index:	77 / 140

Top 5 interrupting factors for doing business in Brazil:

1. *Tax rates*
2. *Restrictive labor regulations*
3. ***Corruption***
4. *Inadequate Infrastructure*
5. *Inefficient government bureaucracy*

Source: World Economic Forum Global Competitiveness Index

FCPA cases in Brazil

*Companies under investigation for alleged FCPA violations

Biomet (2012) - Fine paid - 22 million $

Bribe maid to publicly-employed doctors in Brazil by paying them as much as 10 to 20 percent of the value of their medical device purchases. Similar misconducts took place also in Argentina and China.

Eli Lilly and Company (2012) - Fine paid – 29 million $

Improper payments between 1994 and 2009 to government officials in China, Brazil, Poland, and Russia, to win sales contracts and gain other business advantages.

Tyco International Ltd. (2006) - Fine paid – 50 million $

Between 1996 and 2000, the Ireland-based conglomerate acquired more than 700 companies. In 1998, Tyco acquired Earth Tech Brazil, notwithstanding the fact that it knew Earth Tech had made various illegal payments to Brazilian officials to obtain business.

Relevant regulatory frameworks

Chapter	FCPA	UK Bribery Act	Brazil's CCA	Israeli Penal Law
Bribery of foreign officials	Yes	Yes	Yes	Yes
Bribery in the private sector	No	Yes	No	No
Extraterritorial reach	Yes	Yes	Yes – Only for Brazilian entities	Yes
Other prohibited acts	No	Taking bribe	Fraud in public tenders	Taking bribe
Facilitation payments exception	Yes	No	No	No
Corporate criminal liability	Yes	Yes	No – civil liability only	In legislation process
Credit for compliance program	Yes – sentencing guidelines	Yes – can lead to amnesty	Yes – leniency in penalty	Yes – sentencing guidelines

The dilemma of entering high-risk areas

2

A company's dilemma

Aspects of working through local / external agents

Trade-off between integration time and success odds

Lower monitoring capability on external agents

Better understanding of local regulation and practices

Questions relating agents / distributors / 3rd parties

What is the commission compared to the market standards?

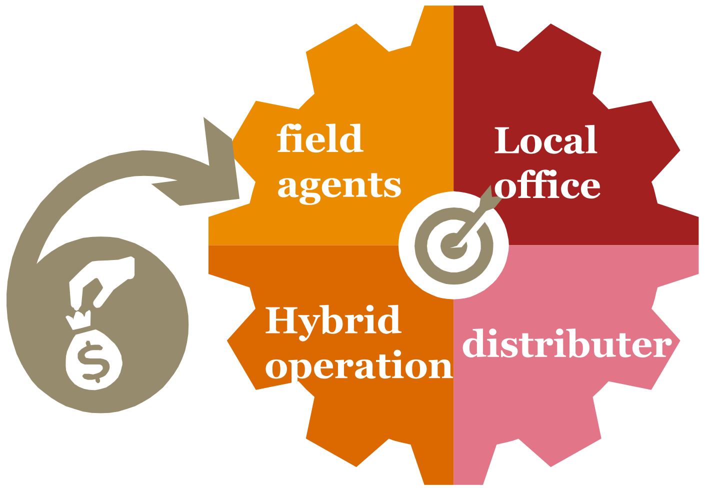
How accurate are the role and service definitions?

What are the capabilities and added value they offer?

Do they have a clean record?

Is their bookkeeping in-line with advanced standards?

What is their reaction to questions on malpractices?



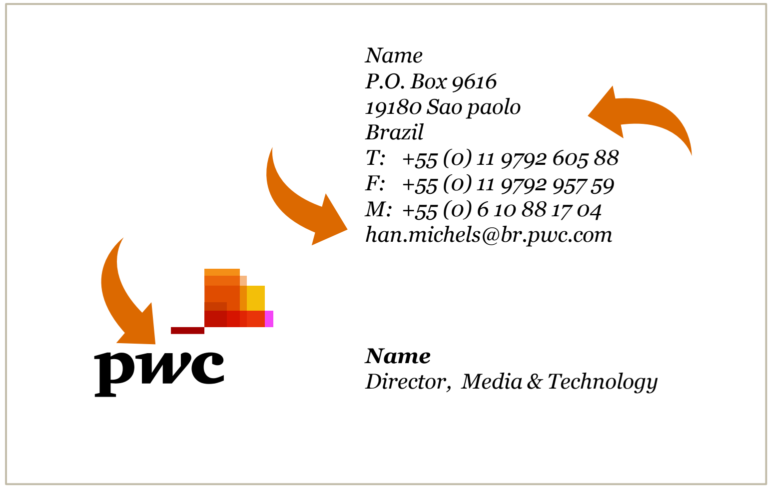
A company’s dilemma – agents vs. employees

Technical / logistic

Should you provide them with your business card?

Should they use your mail accounts?

Should they access your servers?



Your perspective vs. their perspective

Bribe	**Can impact the final outcome**
Kickback	**Depends on the agent**
Facilitation payments	**Impact on the process and not on the outcome**

Managing bribery and corruption risks effectively

3

Compliance program as a means for risk mitigation

Many of the ABAC regulatory frameworks have a different policy towards companies with sound and effective compliance porgram. According to Brazilian Clean Companies Act, sanctions can be mitigated if there is evidence for such program that is continuously implemented and updated.

Compliance Culture

values, code of conduct, tone at the top, engagement processes, due diligence and red flags.

Ethics and Compliance Training

Regulatory frameworks, global standards, policies, internal and external mechanisms, scenario planning.

Hotline and Investigations

Report and consultation mechanisms for employees, agents, distributers, suppliers and customers.

Hallmarks of an effective Compliance Program

Case study

Case study: An Israel based company which operates globally:

1. *Manufactures via more than 30 factories in 27 countries*
2. *Deploys decentralized sales structure to facilitate sales and marketing activities*
3. *Operates via JVs with SOEs and sells to public sector clients*
4. *Uses variated incentives including rebates and discounts, temporary loans of products etc.*

Short-term objective

Perform a Cross-country compliance risk assessment that identifies key legal, as well as financial, operational, compliance, and reputational risks associated with potential bribery and corruption by the company's staff and/or third parties operating on its behalf.

Long-term objective

Country gap assessment – Evaluate the company's existing compliance framework and potential gaps in order to mitigate risks associated with bribery and corruption, focusing on higher risk business activities and heightened risk corporate transactions identified.

Remediation - Design new processes and implement a compliance program across the company's global subsidiaries.

Cross-country compliance risk assessment- Example

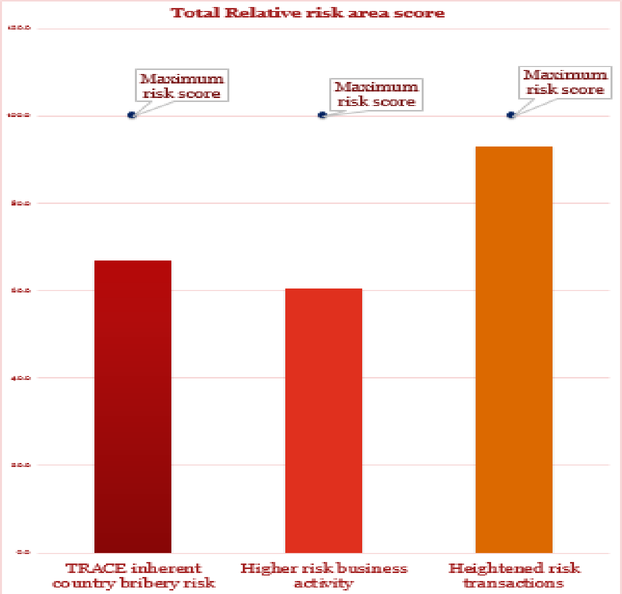
Return to central dashboard
Go to Questionnaire

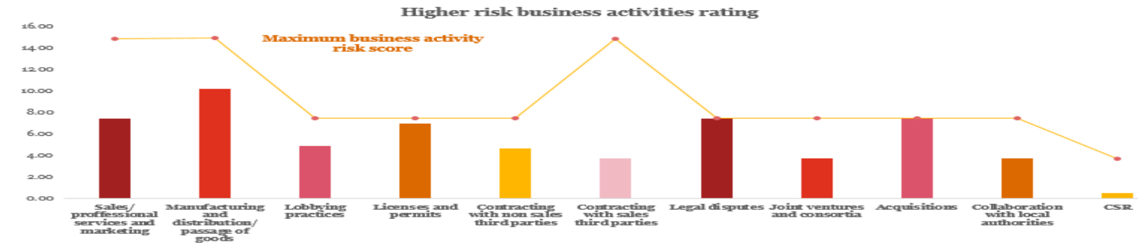
Argentina Country risk score: 73.5 Out of 100

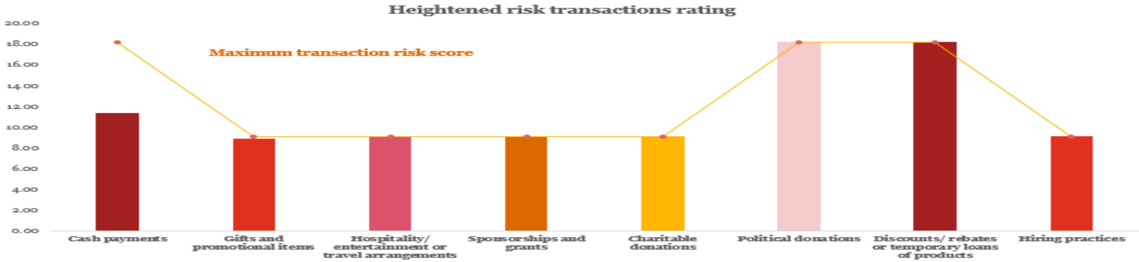
	Total relative risk area score
TRACE inherent country bribery risk	67.0
Higher risk business activity	60.4
Heightened risk transactions	92.9
Total score	73.5
Medium-High	

Key Country Metrics

Global Rank	1/39
Revenue	*$ 2.5 m*
Employees	







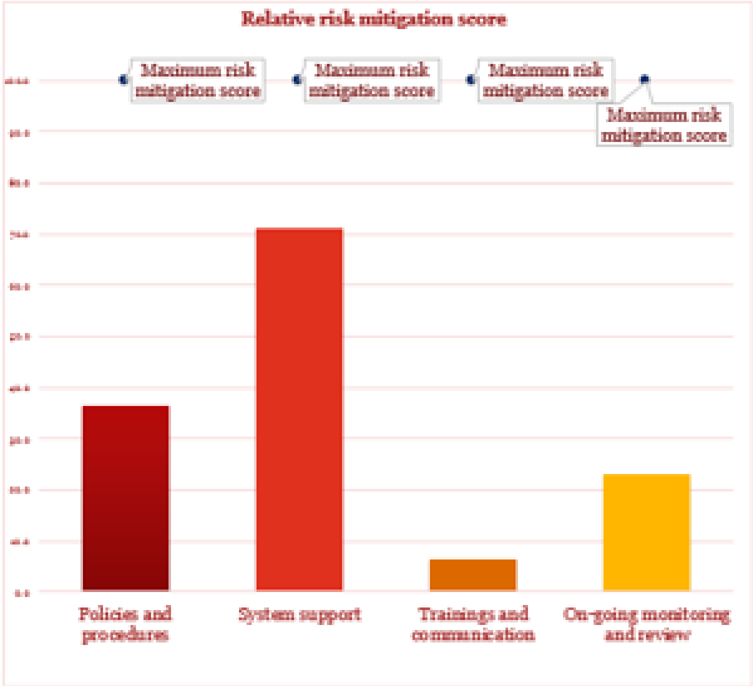
#	Country Business Activity I.D Card	Exposure to Bribery risk
1	High value sales to private sector customers	
2	No high value sales to Government officials	
3	Supplies products and services for private sector clients via multi-year contracts	
4	Supplies products and services for public sector clients via multi-year contracts	
5	Does not operate in any capital projects and infrastructure	
6	Exporter	
7	Sales and marketing are performed via company's personnel exclusively	
8	Engages with strategic advisors for tendering strategies via contractual agreements with fixed price	
9	Engages with external logistics service providers for distribution activities via verbal contract with no pre-determined fee-for-service	
10	Engages with external intermediaries in order to obtain any permits or licenses via verbal contract with no pre-determined fee-for-service	
11	Persuing lobbying activities	
12	Aquires more than 10 permits/ licences in order to operate legally	
13	Does not employ any local tax advisors as part of their local engagements	
14	Is involved in a non-civil legal dispute	
15	Maintains close relationship with local law enforcement authorities	
16	Has experienced multiple past incidents or suspected offering of improper inducements in order to obtain business, due to both internal and external third party missconduct	
17	Operates via joint ventures	
18	Operates via consortia with state owned enterprises	
19	M&A activities	
20	CSR related activities	

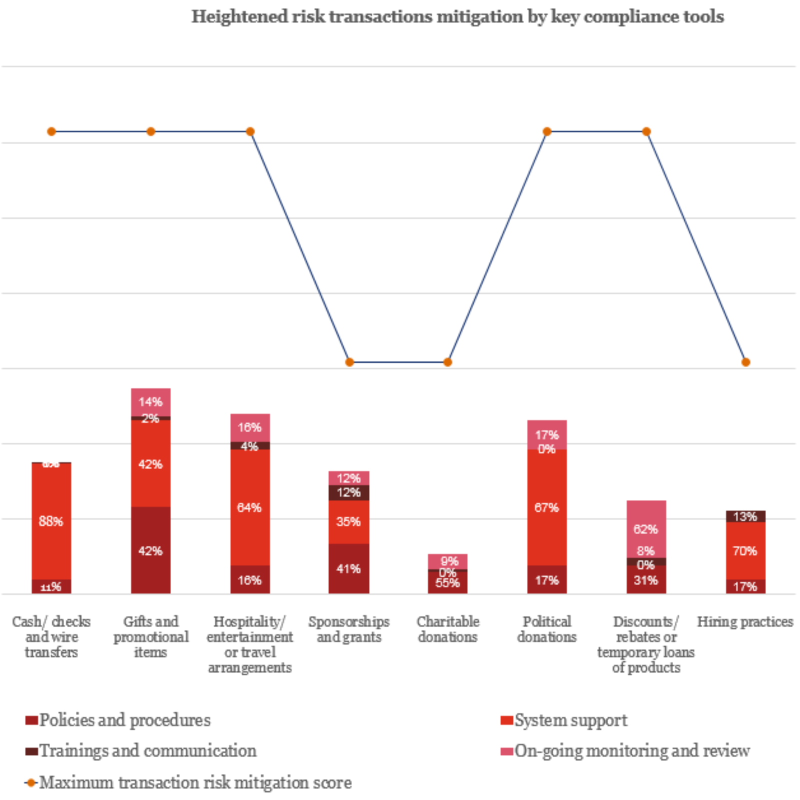
Country gap Assessment - Example

Return to central dashboard
Go to questionnaire

Germany Compliance Framework score: 34.3 Out of 100

	Total relative risk mitigation criteria score
Policies and procedures	36.5
System support	71.2
Trainings and communication	6.4
On-going monitoring and review	23.1
Total score	34.3
Moderate	



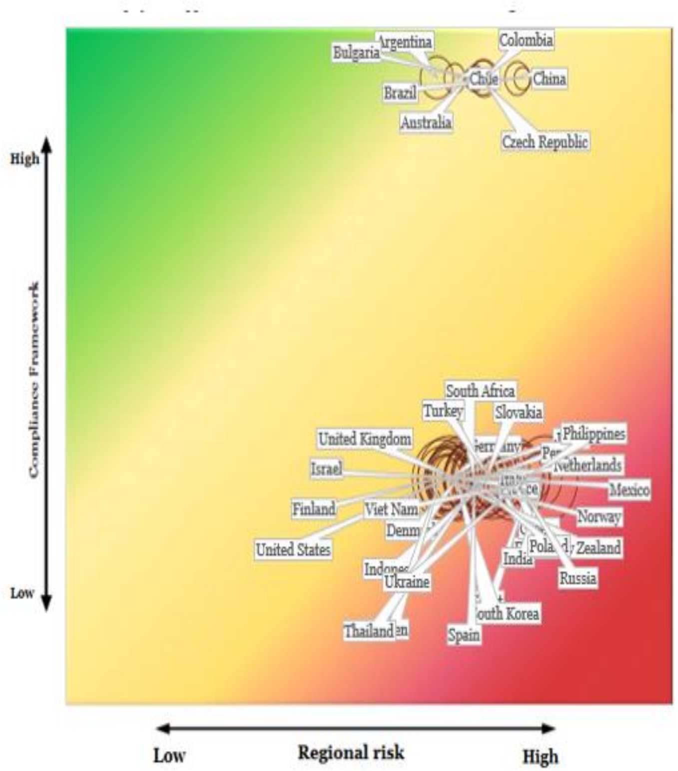


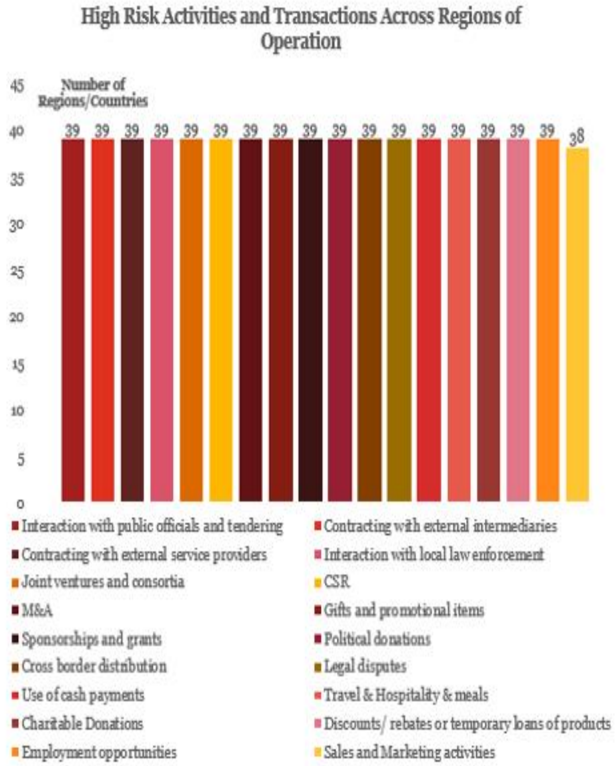
Key Country Metrics

Global Rank	34/39
Revenue	
Employees	

Cross-company results - Example

Number	Country name	Regional risk	Compliance framework	Net risk
1	Argentina	Medium-High	High	Moderate
2	Australia	High	High	Medium-High
3	Brazil	High	High	Medium-High
4	Bulgaria	High	High	Medium-High
5	Chile	High	High	Medium-High
6	China	High	High	Medium-High
7	Colombia	High	High	Medium-High
8	Czech Republic	High	High	Medium-High
9	Denmark	High	Moderate	High
10	Ecuador	High	Moderate	High
11	Egypt	High	Moderate	High
12	Finland	Medium-High	Moderate	Medium-High
13	France	High	Moderate	High
14	Germany	High	Moderate	High
15	Greece	High	Moderate	High
16	India	High	Moderate	High
17	Indonesia	High	Moderate	High
18	Israel	High	Moderate	High
19	Italy	High	Moderate	High
20	Japan	High	Moderate	High
21	Mexico	High	Moderate	High
22	Netherlands	High	Moderate	High
23	New Zealand	Medium-High	Moderate	Medium-High
24	Norway	High	Moderate	High
25	Peru	High	Moderate	High
26	Philippines	High	Moderate	High
27	Poland	High	Moderate	High
28	Russia	High	Moderate	High
29	Slovakia	High	Moderate	High
30	South Africa	High	Moderate	High
31	South Korea	High	Moderate	High
32	Spain	High	Moderate	High
33	Sweden	Medium-High	Moderate	Medium-High
34	Thailand	High	Moderate	High
35	Turkey	High	Moderate	High
36	Ukraine	High	Moderate	High
37	United Kingdom	High	Moderate	High
38	United States	High	Moderate	High
39	Viet Nam	High	Moderate	High

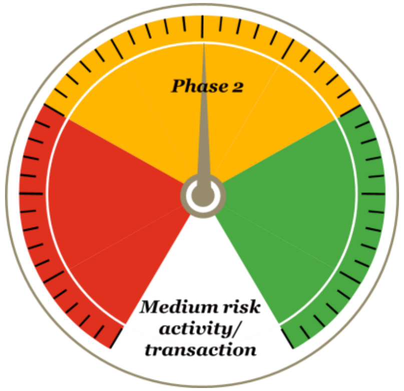




Remediation and response methodology - Example

Response Matrix

	Core compliance program and policy & SOP's	Training for 3th parties	Training for personnel	On going monitoring and review
Type of response	Address through policy with a clear statement and monitor changes in risk levels	Periodic review of contracting terms and conditions through audits or onsite visits	Ensure dynamic continuance in training practices	Periodic testing through audits and response to potential changes in risk levels
Priority for treatment	Not immediate	Not immediate	Not immediate	Not immediate



Response Matrix

	Core compliance program and policy & SOP's	Training for 3th parties	Training for personnel	On going monitoring and review
Type of response	Review of current company's activities with respect to the risk area and address through relevant missing components in the CCP and policy	Assess adequacy of trainings with respect to terms of engagement with the third party, apply necessary changes	Assess adequacy of trainings with respect the risk area, apply necessary improvements	Assess adequacy of monitoring tools with respect to compliance with anti-bribery requirements, apply necessary improvements
Priority for treatment	Second priority	Second priority	Second priority	Second priority

Response Matrix

	Core compliance program and policy & SOP's	Training for 3th parties	Training for personnel	On going monitoring and review
Type of response	Perform a deep-dive analysis of the company's activities regarding the risk area, conduct onsite testing and screening of sampled transactions, implement country specific tools	Apply changes to third party training program both in consistency and depth, in order to minimize risk and exposure	Apply changes to personnel training program both in consistency and depth, in order to minimize risk and exposure	Apply tools for monitoring and screening with respect to compliance with anti-bribery requirements
Priority for treatment	First priority	First priority	First priority	First priority

Thank you very much!

Muito obrigado!

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