PaRR Asia’s half-yearly anti-corruption report highlights the challenges faced by multinational companies in keeping up with the changing enforcement by Asian anti-graft regulators as they strengthen their domestic laws - Singapore, Malaysia and South Korea being a few covered in this report. PaRR reported how China’s enforcement against GSK has triggered many pharma companies to audit sales practices. This PaRR report also highlights how Asian companies are more skeptical of the UK Bribery Act despite no enforcement having taken place against Asian companies yet. All eyes are on the high profile bribery case being heard almost daily in Indonesia involving Innospec.
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Asia

MNCs more wary of Asian anti-corruption laws than FCPA, British Bribery Act – analysis

• Changes in Southeast Asian anti-graft laws pose challenges for multinationals
• Chinese, Brazilian authorities regarded as toughest on corruption
• South Korean anti-corruption law has wider scope than US, UK equivalents

Multinational companies operating in Asia are finding it more challenging to keep up with changing domestic anti-corruption law from a compliance and risk enforcement standpoint, multiple sources including in-house corporate counsel have told PaRR.

Over the past few years, a number of Asian jurisdictions have strengthened their domestic anti-corruption laws, said three anti-corruption lawyers.

"Many of those regimes are now more stringent than foreign anti-corruption statutes such as the US Foreign Corrupt Practices Act [FCPA] or the UK Bribery Act," said Kyle Wombolt, global head of corporate crime and investigations at Herbert Smith Freehills. That, coupled with more active local regulators, could make navigating the local business landscape more challenging than before, he added.

An in-house counsel at a US-headquartered technology company with operations in many Southeast Asian countries said that operating in a new environment was always challenging, especially in emerging economies where regulations are "yet to be set in stone". Not only was the company leery about having to face the FCPA scrutiny, given the "facilitation payments" it needed to make in countries such as Indonesia to obtain business, but it also had one eye on proposed legislative changes expected in Singapore. The city-state is weighing an overhaul of its 55-year old Prevention of Corruption Act and is expected to give more clarity on corporate liability.

A Seoul-based antitrust lawyer told PaRR that MNCs may be concerned that Asian anti-corruption laws could be selectively applied, such as in China, where there were complaints that regulator would go after California-headquartered Hewlett Packard rather than domestic Chinese manufacturers. "There is a concern [over] slight protectionism," the lawyer added.

Although domestic laws do not aim to target MNCs, multinationals are wary of South Korea’s anti-corruption law as it has a broader scope than either the United States’ FCPA or Britain’s Bribery Act, said a second Seoul-based attorney, adding that domestic companies and MNCs alike should arm themselves with a thorough knowledge of the law to avoid potential sanctions.

James Hough, partner at Morrison Foerster in Tokyo, said multinationals in Japan and elsewhere were very concerned about anti-corruption enforcement in countries such as China and Brazil, where local authorities such as the Chinese State Administration for Industry & Commerce and the Procuradoria Geral da Republica were "becoming much more aggressive about prosecuting local corruption cases". He added that Japanese anti-corruption policy was not too worrisome for most Japanese companies.

A second in-house counsel at a US-based internet company operating in Singapore said it was increasingly difficult for multinational companies to apply a single compliance program across an entire region in which the legal environment was in a state of flux. The question was whether companies should set very stringent compliance programs at the expense of losing business or follow an international compliance policy that may not be consistent with Asian laws, especially in countries where anti-graft laws are evolving, the counsel said.

The counsel’s company, which is on an acquisition spree, was forced to forgo acquiring a potential target in Indonesia amid fears of potential action by the US Department of Justice (DoJ).

Wilson Ang, a partner at Norton Rose Fulbright, said in a client alert last year that as many jurisdictions across the Asia-Pacific tighten the noose on corrupt practices, it was crucial that MNCs had a strong grasp of the fundamental features of local laws in the jurisdictions in which they operate, as well as the extraterritorial application of enforcement regimes around the world.

Failing to do so could result in severe consequences ranging from criminal convictions entailing massive fines and prison sentences for senior executives, to civil suits and irreparable damage to a company’s reputation leading to loss of investor confidence and share value," said Ang.

An anti-graft attorney said local laws were more stringent than those in the US in the sense that there was no room for exceptions and nor did they allow affirmative defenses. In addition, while the jurisdiction of the DoJ and UK’s Serious Fraud Office could be questioned, if a case involved an official from an Asian government, domestic law would apply with few exceptions, the attorney explained.

Chinese authorities are aggressively going after corruption and are perceived to be targeting overseas-headquartered companies, which two attorneys said could be related to political imperatives. The first attorney said China had cracked down on violations in various sectors, including pharmaceuticals, automobiles and technology. Yet Ang pointed out that at the same time, China continued to be cited in many corruption cases investigated by US and UK enforcement agencies.

A Singapore anti-graft lawyer said that considering the DoJ was aggressively pursuing Asian companies, it would be tough for local regulators to do nothing.

Asia-Pacific is a geographic focus of FCPA enforcement activity, generating one-quarter of all enforcement action between 1 May 2013 and 30 April 2014. Of that, two-thirds related to China
and Indonesia. Parallel investigations to combat corruption in the Asia-Pacific region were more prominent in China, India and Indonesia, according to Herbert Smith Freehills’ Asia Pacific Anti-Corruption Report released last September.

by Freny Patel in Hong Kong, Danbee Lee in Seoul and Yuriko Nagano in Tokyo

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UK Bribery Act has claws, several international cases in pipeline - ABA Asia Forum

Asian companies should bear in mind that there are several bribery cases with an international flavor waiting in the pipeline of the Serious Fraud Office (SFO), said Vivian Robinson, partner at McGuire Woods, during the American Bar Association (ABA) Asia Forum in Tokyo on Monday (2 March).

While the SFO has not yet prosecuted any companies in Asia, the Anti-Bribery Act is not a “paper tiger” and will be enforced in the next few months, Robinson said.

"We are more worried about the UK Bribery Act than the FCPA," general counsel of Itochu Corporation Mitsuru Chino said during the panel.

Violations could come with severe penalties because there is no ceiling on the fines. Robinson added that the law encompasses all companies incorporated in the UK or carrying out any form of business through, among others, local agents and joint ventures.

It does not matter where the actual bribe takes place as long as the previous conditions apply, Robinson added.

If a company is taken to court over a violation of the Act, the best defense is proof of adequate compliance measures at the time of the alleged violation.

He added that there are six principles underpinning this defense: tone from the top or whether the board is setting a high ethical ground, proper risk assessment, due diligence, proportionate procedures, adequate communication and compliance training, and continuous monitoring.

by Arlan Thayib in Tokyo

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China

Post GSK, Big Pharma ups expense audits to reign in sales practices

- Monitoring events has become normal practice
- Measures taken to modify incentives
- Local enforcement inconsistencies pose challenge to compliance efforts

Multi-national drug companies are stepping up the auditing of sales expenses in China, with some conducting inspections of 100% of receipts as they build up compliance in the aftermath of the landmark GlaxoSmithKline investigation.

“Companies are hiring compliance personnel just to audit fapiao,” said a Guangdong-based compliance officer with a global drugmaker. Fapiao is a term that refers to Chinese tax invoices. The same source said that many of those dedicating their efforts to auditing fapiao are China-licensed attorneys.

Other companies have sent compliance staff to spot-check company-sponsored events to make sure they are carried out as stated—for academic changes and not as a vehicle to pass bribes, internal counsels reported.

Compliance personnel are typically sent to events in tandem with sales representatives, where they take pictures, recordings and count heads as evidence that the events are run as planned.

Computer forensics is also increasingly deployed in the sector’s compliance efforts. The technology is used to digitize and analyze company data including fapiao to find "outliers" and anomalies that indicate compliance breaches.

Such measures are being taken after China fined British drugmaker GSK CNY 3bn (USD 487.4m) last year and incarcerated multiple executives for bribing doctors in order to increase sales. The bribes were carried out in collaboration with travel agencies, which would funnel bribes to doctors and officials by creating fake conference services as an expenditure.

GSK’s fellow British drug manufacturer AstraZeneca, for example, is spot-checking 20-30% of its events and has been reducing incentives to its sales reps, according to the company’s internal counsels. The company also promoted Qian Wei, a former Asia commercial director who had no prior compliance experience, to vice president of compliance in March last year, in the hope that Wei’s familiarity with the commercial side of operations would help spot illegal practices and set up effective checks and balances for issues not addressed by a traditional compliance regime.

Speaking at a conference in Shanghai on Tuesday (17 March), Wei said he initiated a job rotation program in the company, in which senior managers in sales and compliance functions would switch positions for three to six month to understand each other’s side of the business.
China FCPA due diligence hits new levels amid M&A spree

- Due diligence can last as long as six months
- China plans tenfold increase in commercial bribery fines
- Consumer and food industries should up compliance—report

Foreign bidders are conducting ever-deeper scrutiny of China M&A targets for anti-corruption compliance as they embark on a buying spree in the world's second largest economy.

In 2014, China saw a record number of deals and bidders have made compliance with the US Foreign Corrupt Practice Act (FCPA)—one of the most actively enforced anti-bribery laws in the world—a high priority as they conduct pre-purchase due diligence, compliance lawyers said. A full due diligence investigation can last as long as six months in some cases, they added.

“Thanks to that, our salespeople now welcome spot checks, because they are compensated if they pass with a high score,” said Wei.

According to a study by Concentrate, a Chinese medical sector consultancy, GSK has capped the monthly expenses of its sales reps at CNY 1,000, while the cap at Sanofi is CNY 7,000. Nearly all of the major multinational drug companies have capped dining expenses during conferences at CNY 300 per person.

While the US’s Foreign Corrupt Practices Act is still one of industry’s main concerns, many new compliance measures were designed with increasingly stringent domestic enforcement in mind, internal counsels in the space report.

Yet, the lack of consistency and clarity in local enforcement poses one of the biggest challenges to their compliance efforts, the internal counsels added.

Industry and commerce authorities in different regions of China enforce the law differently, said an internal counsel with a multinational drugmaker. And unlike their US counterparts, they tend to ignore a company’s good-faith internal compliance efforts when assessing violations, and consider only the violation itself.

“I think there needs to be one company that challenges the administrative enforcement in court, best if taken to the supreme court. And then there will be some sort of judicial interpretation that can help boost enforcement quality and consistency,” said the counsel.

“Personally, I don’t have the guts to do that in China, hopefully somebody has.”

“Awareness is rising quickly,” said Kate Yin, a Beijing-based compliance attorney with Fangda Partners. “The more you do business in a country, especially like China where corruption risk is high, the more likely you will commit or buy into violations, and the more careful you need to be.”

The FCPA recognizes successor liability, meaning that buyers can be held liable for violations committed by the target company pre-acquisition. The US Department of Justice has applied successor liability consistently and broadly, covering even minority stakes or asset purchases in some cases, the lawyers said. That technically subjects every transaction to the risk of violation.

Some of the largest FCPA fines resulted from successor liability, including the 2009 case where Halliburton and KBR were fined over USD 400m.

Merger and acquisitions (M&A) by foreign investors on the Chinese mainland and Hong Kong hit a record high in 2014, increasing by 79.9 percent to USD 38.2bn year-on-year. The total was USD 21.3bn in 2013.

A total of 201 deals were made in 2014, 20 more than the previous year, according to a report by PaRR’s sister publication Mergermarket. US buyers were some of the most active, with the 55 deals, almost three times the number of 18 in 2013.

“Most buyers, if not everyone, does FCPA checks before purchase, and they are doing it ever [more] thoroughly,” said Yin.

An anti-commercial bribery report published in January—of which Yin was the lead author—concluded that China’s anti-commercial bribery laws are broader in scope than the FCPA. The report also advised foreigninvested companies engaged in the fast moving consumer goods and food industries should further strengthen compliance systems to cope with China’s changing enforcement of anti-corruption laws.

Chinese enforcement

Successor liability doesn’t apply to targets that previously didn’t fall under the jurisdiction of FCPA, such as companies incorporated in China that have no operations in the US. But conducting thorough checks on those targets can help stop violations that might incur future sanctions.

In addition, the increasingly aggressive anti-bribery enforcement by Chinese regulators serves as another incentive for buyers to find all the skeletons in a target’s closet before closing a deal.

“Compliance with Chinese anti-bribery laws [has] come to prominence in recent years, especially after the landmark GlaxoSmithCline case,” said a Shanghai-based compliance lawyer.

“It’s to some extent more complicated than compliance with the FCPA, because China’s enforcement record lacks consistency and the law [is] up to great interpretation,” the lawyer said.

As previously reported, China is considering a tenfold increase in fines as allowed by the Anti-Unfair Competition Law, one of the country’s major laws dealing with commercial bribery.
In addition, those who violate the law will be asked to disgorge illicit revenues, not just profits.

by Gary Gao in Shanghai

China plans tenfold increase in maximum fine for unfair competition law violations

- Draft amendment of Anti-Unfair Competition Law under State Council review
- Regulators hope amended law will pass by year end

China’s State Administration for Industry and Commerce (SAIC) has proposed raising the fines ceiling under China’s Anti-Unfair Competition Law to CNY 2m (USD 320,000) from the present limit of CNY 200,000 as part of a legal amendment, a source familiar with the matter said.

In addition, those who violate the law will be asked to disgorge illicit revenues, not just profits, said the source, who was involved in amendment work on the law. The current version of the law authorizes regulators to impose fines for unfair competition violations, including commercial bribery, of up to CNY 200,000 and the confiscation of “illegal earnings.” The source said interpretation of illegal earnings in the past had involved companies’ relevant profits.

Meanwhile, the scope of the law will be broadened to cover not only both sides of an issue but also “third parties that can influence business activities,” according to the source.

The proposed amendment to the Anti-Unfair Competition Law is currently being reviewed by China State Council’s Legislative Affairs Office, the source said, and a final version still needs approval from the National People’s Congress, China’s rubber-stamp legislature.

Amendments are progressing steadily, with lawmakers and regulators are aiming to pass the amendment by the end of 2015, said the source.

The Anti-Unfair Competition Law was first enacted in 1993 and has not been changed since.

“After 20 years the law is outdated,” the source said. “A lot of concepts and behaviors need to be redefined for the law to be compatible with reality.”

One of biggest problems with the law as it stands is that the CNY 200,000 fine ceiling has proved too low to deter violations, the source said.

The SAIC’s proposed amendment also seeks to raise the law’s legal authority and to prevent intervention by industry regulators, the source said. The revised law will give industry and commerce authorities stronger enforcement powers in cases that are currently solely overseen by sector regulators, the source said.

To address corruption, the draft amendment references certain elements of the US Foreign Corrupt Practices Act and similar laws in South Korea, the source added.

The draft also takes into consideration compatibility with China’s Interim Measures on Administration for Medical Treatment and Regulation on Health Organizations Accepting Social Donations, which oversees donations to hospitals, including conference sponsorship and medical equipment donations.

The health sciences industry has been center stage in China’s anti-commercial bribery campaign following the high-profile prosecution of the GlaxoSmithKline (GSK) case last year.

As previously reported, amendment to the Anti-Unfair Competition Law partly seeks to address issues surrounding the GSK investigation so that the law will become more actionable.

The source said that Article 8 and Article 22 of the existing law, which address commercial bribery, will be revised to broaden coverage and stiffen punishment.

Currently, Article 8 stipulates that a business operator must not resort to bribery by offering money or goods, or by any other means, in sales or purchases of commodities, among other things.

Article 22 states: “A business operator that resorts to bribery by offering money or goods, or by any other means, in selling or purchasing commodities, if the case constitutes a crime, shall be investigated for criminal responsibility according to law. If the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than RMB 10,000 but not more than RMB 200,000 in light of the circumstances and confiscate illegal earnings, if any.”

by Gary Gao and Lisha Zhou in Suzhou
Indonesia

**Innospec bribery trial: Former Pertamina executive objects to indictment**

The legal representatives of Suroso Atmomartoyo launched a formal objection against his indictment at a hearing today at Indonesia's Corruption Court.

A former director of oil processing at state-owned oil firm Pertamina, Atmomartoyo was indicted for allegedly having received bribes from Willy Sebastian Liem, the director of Soegih Interjaya. Liem was allegedly acting as the local agent for US-based oil additive manufacturer Innospec in supplying tetraethyl lead to Pertamina's refineries.

Liem is also a defendant in the case, although his hearings began two weeks earlier than Atmomartoyo's. On 15 June judges in Liem's trial simply dismissed his formal objection.

Hot on the heels of Liem's hearings, judges have given Atmomartoyo's lawyers until 22 June to mount an objection and they will then hand down an order whether or not uphold the objection.

In the official reading of Atmomartoyo's indictment, prosecutors from the Corruption Eradication Commission (KPK) said Atmomartoyo had been found to have signed a procurement agreement for Pertamina in 2004. Liem had also been found to have opened a bank account at United Overseas Bank in Singapore in Atmomartoyo's name and transferred sums of money several times over the course of 2005 to a total of USD 190,000.

Both defendants allegedly met in April 2005 to discuss a trip to London for Atmomartoyo that was to be paid for by Innospec. The prosecutors alleged that Innospec had spent around GBP 900 (USD 1,412) to accommodate Atmomartoyo's family at a hotel in the British capital.

For the alleged acceptance of cash and a paid trip to the UK, the KPK is indicting Atmomartoyo on a criminal charge, as stipulated by Indonesian anti-corruption law, the prosecutors said at the hearing.

Atmomartoyo's legal representatives are led by Jonas Sihaloho of HSP Partners. The case is registered in the district court of Central Jakarta as case No 46/PID.SUS/TPK/2015/PN JKT.PST.

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**Innospec bribery trial: Indonesian corruption watchdog’s independence challenged**

The independence of the Indonesian Corruption Eradication Commission (KPK) is being considered by a group of judges that is set to arrive at an interim order next week (15 June) in the Innospec bribery case.

Soegih Interjaya Director Willy Sebastian Liem was found to have bribed officials at state-owned oil giant Pertamina on behalf of UK-based Innospec, a fuel additives company.

A five-member bench at the specialist court heard submissions from prosecutors following an appeal request from Liem on Monday (8 June).

Liem was found to have opened and transferred USD 190,000 into a United Overseas Bank account in Singapore under the name of Suroso Atmomartoyo, a former oil processing director with Pertamina.

The bribery enabled Innospec to supply the additive tetraethyl lead to Pertamina's refineries between 2004 and 2005.

London's Southwark Crown Court found Liem guilty of conspiracy to commit corruption alongside Innospec sales director David P. Turner, CEO Paul Jennings, ex-CEO Dennis Kerrison and Asia-Pacific Sales Director Miltos Papachristos, as reported.

At trial on 25 May in Jakarta, Liem’s lawyers had questioned the independence of the KPK findings – the KPK referred the case to the Corruption Court – and the legality of using evidence produced by law enforcement agents outside Indonesia.

On Monday, prosecutors countered that the Indonesian court was entitled to rely on evidence collected by the UK’s Serious Fraud Office and other overseas law enforcers.

Prosecutors argued that Liem’s request for appeal was baseless, asking the judges to continue hearing the case.

The five-man bench is scheduled to pass an interim order on the suspect’s appeal request next Monday (15 June).

The trials for Atmomartoyo will begin in mid-June at the Corruption Court and will run concurrently, but separately, from Liem’s. The two remain the only suspects in the action currently undergoing trial.

Liem is represented by Palmer Situmorang of Palmer Situmorang & Partners law firm. This case is registered in the district court of Central Jakarta with case number 34/PID.SUS/TPK/2015/PNJKT.PST.

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by Arlan Thayib in Jakarta
Singapore corruption law review highlights need for clarity in proving corporate liability - analysis

- Effective compliance program suggested to balance lower thresholds for corporate liability
- 10 companies including Keppel Shipyard, Federal Hardware Engineering fined under corruption law
- Malaysia looks at corporate liability as it reviews anti-graft law

More clarity is needed on how corporate liability should be proved as Singapore weighs an overhaul of its 55-year-old Prevention of Corruption Act (PCA), last reviewed in 1993, according to members of the legal fraternity.

Prime Minister Lee Hsien Loong announced in January that Singapore planned to tighten its anti-graft laws, boost staffing at the Corrupt Practices Investigation Bureau (CPIB) by 20%, and establish a reporting center for corruption-related crimes.

Lawyers interviewed by PaRR said the review was timely, although which aspects of the law would be revamped remained uncertain. Many hope for changes in how corporate liability is proved. Bribery-related cases in Singapore have primarily focused on individuals rather than corporates. However, with many multinational companies operating in the city-state, there are fears that setting up bases there could one day haunt some of those companies, lawyers said.

A CPIB spokesperson said that the last major review of the PCA took place in 1989, four years before the 1993 exercise. The current PCA review is being undertaken by a team from the CPIB and the Attorney General’s Chambers, but the spokesman would not give details, saying: “As the policy review is ongoing, it is premature to comment on the specific details at this point of time.”

The spokesperson said that the PCA already provided for corporate liability as offences under it related to corrupt conduct by any “person.” Under Singapore law, a person is defined not only a natural person, but also a legal person, ie an entity. A person is defined in Section 2(1) of the Interpretation Act (Chapter 1) as including “any company or association or body of persons, corporate or unincorporate.” The definition applies to all legislation in Singapore, the spokesperson told PaRR.

Weiyi Tan, a local principal at Baker & McKenzie, Wong & Leow, told PaRR that although Singapore’s anti-graft law allowed for corporate liability, it could provide greater clarity on the threshold for corporate liability, which was a perennial concern for many multinationals operating in the city-state. She said that under Singapore law, for a corporate entity to be liable for the acts of its employees, it had to be shown that any employee committing an act of bribery was the “directing mind and will” of the company, which could be difficult to prove evidentially.

Tan added that while it remains to be seen which aspects of Singapore’s law would be amended, coincidentally, Malaysia was also revising its anti-corruption laws.

“One of the key changes [in Malaysia’s anti-graft law] would be the introduction of corporate liability, and it would be interesting to see if Singapore might make amendments related to the same,” she told PaRR.

The Malaysian Anti-Corruption Commission has announced that it is considering the UK Bribery Act as a model for proposed amendments, as well as the broad application of the United States’ Foreign Corrupt Practices Act to Malaysian corporations, Tan said.

Another Singapore-based lawyer told PaRR that considering the way in which multinational conglomerates were run and established, it would be difficult to prove whether an individual who committed such a crime could be regarded as having the ability to direct the mind and will of a company.

A client alert sent out by Norton Rose Fulbright on Singapore’s anti-corruption law overhaul said the review might do well to look at Singapore’s anti-money laundering law – the Corruption, Drug-Trafficking and Serious Crimes (Confiscation of Benefits) Act – which renders money-laundering by a corporation a criminal offence that can be proven through the state of mind as well as the conduct of any “director, employee or agent” acting within the scope of his or her actual or apparent authority. With this, the evidential threshold is significantly lowered and the outdated “directing mind and will” test is done away with.

Norton Rose Fulbright suggested introducing a compliance defense program; a company’s compliance program, if properly in place, could absolve it from legal liability should it be found liable for bribes paid by an employee or director, or even an agent, as long as the company could prove it had taken all reasonable measures to prevent corrupt practices. This idea is not new, as the “compliance defense” mechanism exists under the UK’s Bribery Act 2010.

At least 10 corporate casualties

The CPIB spokesperson told PaRR that companies had been prosecuted under the PCA in the past, citing Keppel Shipyard and Federal Hardware Engineering Co, as well as eight transport companies.

In 1997, Keppel Shipyard was charged in court under Section 6(b) of the PCA for bribes totalling SGD8,527,343 (USD 6.4m) paid to Dutch marine engineer Cornelis Van Der Horst, who was also the repair and technical manager at Petroleum Shipping Ltd, a subsidiary of Exxon Corp. Large sums of money were remitted by Keppel Shipyard into Cornelis’s bank accounts in Singapore so that he would assist Keppel Shipyard in securing tenders for ship repair jobs with Petroleum Shipping Ltd. Keppel Shipyard pleaded guilty to three charges and was fined SGD 300,000.

In 2004, Federal Hardware Engineering Co, a hardware engineering company based in the city-state, was charged ...
in court for bribing an employee of Japan-based Toyo Engineering Corp in exchange for sales orders. The appointed representative of Federal Hardware Engineering pleaded guilty and the company was fined SGD 60,000.

In the same year, eight transport companies were charged for offering bribes. Under Singapore law, transport companies moving oversized cargo for normal road travel are required to obtain special road travel permits from the traffic police. They are also required to engage CISCO outriders (authorised commercial auxiliary police officers) to provide escorts to ensure public safety during road travel. In the case, drivers at the eight transport companies had given bribes to CISCO outriders so that they would be lenient in performing their escort duties. The appointed representatives of the eight companies pleaded guilty to the charges against them.

The CIPB spokesperson said Singapore adopted a zero-tolerance policy towards corruption and that the CPIB would not hesitate to take action against any individuals or entities involved in corrupt practices.

Many lawyers pointed out that Singapore’s anti-corruption law was among the most aggressive in the region. Nevertheless, the current review was timely and demonstrated Singapore’s commitment to maintaining its leading reputation for incorruptibility, Tan said.

Singapore ranks as the seventh-least corrupt country in the world in the latest Transparency International Corruption Perception Index, down two places from the previous year.

Lee said the drop in the country’s ranking could be due to high-profile corruption cases involving senior civil servants in the past few years, including a sex-for-contracts case involving a senior officer in the civil defense force, and the misappropriation of funds by a branch chief of the CPIB.

by Freny Patel in Brussels

South Korea

Kim Young-ran Act will change how Korean healthcare industry interacts with doctors – Asialaw Asia-Pacific In-house Counsel Summit

- Bill expected to be passed in September 2016
- Solid compliance policy a good defense in corruption courts

Healthcare companies in South Korea must exercise caution when interacting with doctors as they may be regarded as public officials under the proposed Kim Young-ran Act, according to the legal operations and business development director at Glaxosmith Kline Korea, Kim Jungwook.

When the act comes into force, doctors who are both healthcare professionals and employees of publicly-funded institutions like universities and hospitals will be regarded as government employees, Kim said, speaking at the Asia-Pacific In-house Counsel Summit, organized by Asialaw in Hong Kong on 27 May.

The proposed law on the Prevention of Improper Solicitation and Receipt of Money and Goods, colloquially known as the Kim Young-Ran Act, defines government officials much more broadly and imposes corporate liability on businesses charged for corruption-related offenses. The bill is due to be passed into law in September 2016, said Choi Kyungsun, a senior foreign attorney at law firm Kim & Chang, also speaking at the conference.

The possible reputational damage that can be brought about by an anti-corruption probe could be disastrous for domestic pharmaceutical firms, and top management must bridge the gap between solid compliance and representatives’ hitting sales targets in selling to doctors and hospitals, a Seoul-based industry source told PaRR.

Raymond Goh, global investment director at Anbang Asset Management, said that in the financial sector, public relations firms, lobbyists and the media played an important role, especially in helping foreign companies to acquire Korean entities. He said the South Korean government and the public needed much convincing whenever foreign companies entered the domestic market.

Choi said there had been an uptick in requests to law firms to review third parties such as PR firms, thanks to the impending Kim Young-ran Act, especially for businesses in highly regulated sectors such as finance and insurance.

Maggie Li, senior counsel for Asia-Pacific at Avery Dennison, said that although the business community in Korea was feeling agitated by the probable passing of the anti-corruption law, progress was still very gradual thanks to an extremely hierarchical business culture that discouraged lower-level employees from blowing the whistle on their superiors. She
said her company was adopting internal control measures such as an anonymous reporting hotline and a policy on non-retaliation.

Marina Moon, a foreign attorney at Kim & Chang, said a solid compliance regime was one of the best defense strategies for companies. South Korean courts were generally very reasonable and recognized that rogue employees are a fact of life, she added. She said South Korea’s Supreme Court had clear precedents that set out the requirements companies needed to abide by to protect themselves from liability, such as proper compliance policies and training.

Kim said companies should not be too panicky about the Kim Young-ran Act. If they violated the act, they would likely also be violating the US Foreign Corrupt Practices Act or the UK’s Bribery Act, and that should already be a cause for concern, he said.

by Arfan Thayib in Hong Kong and Danbee Lee in Seoul