

Going Global

Brett Ingerman & Ellen Dew

ACC Maryland Chapter

July 17, 2019



About DLA Piper



Global Presence



- DLA Piper presence
- Cooperation firm

AMERICAS

Argentina
 Brazil*
 Canada
 Colombia
 Chile
 Mexico
 Peru
 United States

EUROPE

Austria
 Belgium
 Czech Republic
 Denmark
 Finland
 France
 Germany
 Hungary
 Italy
 Luxembourg
 Netherlands

Norway
 Poland
 Portugal
 Romania
 Russia
 Slovak Republic
 Spain
 Sweden
 Ukraine
 United Kingdom

MIDDLE EAST

Bahrain
 Kuwait
 Oman
 Qatar
 Saudi Arabia
 United Arab Emirates

AFRICA

Algeria
 Angola
 Botswana
 Burundi
 Ethiopia
 Ghana
 Kenya
 Mauritius
 Morocco
 Mozambique

Namibia
 Nigeria
 Rwanda
 Senegal
 South Africa
 Tanzania
 Tunisia
 Uganda
 Zambia
 Zimbabwe

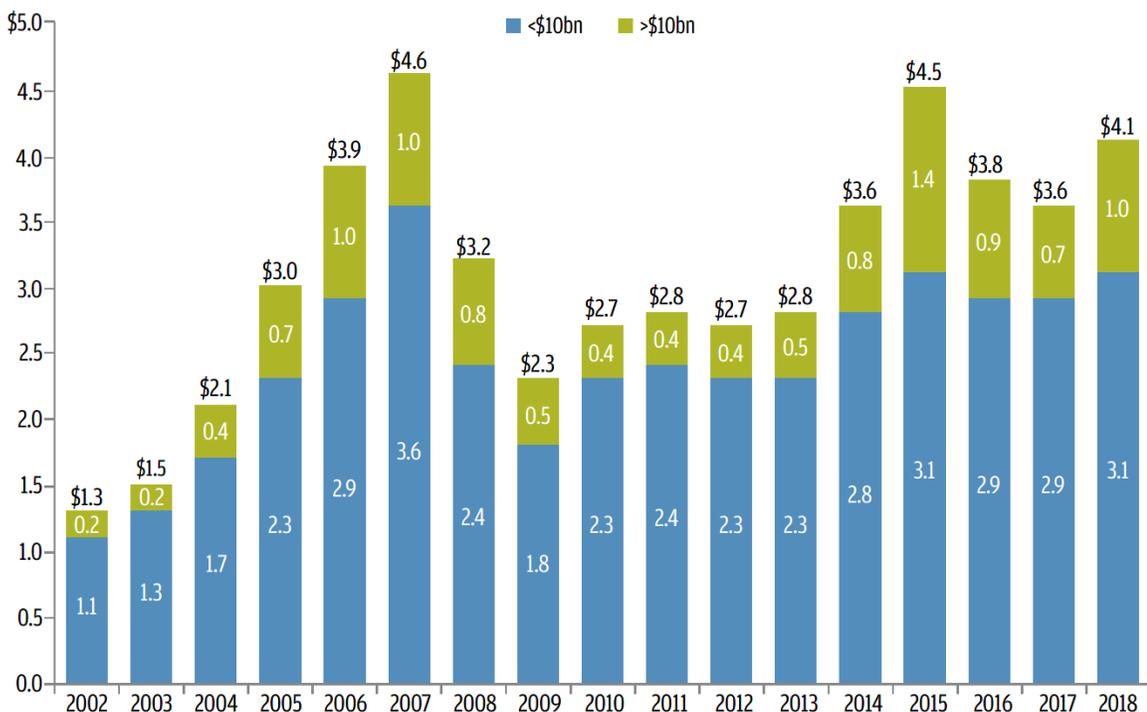
ASIA PACIFIC

Australia
 China
 Japan
 New Zealand
 Singapore
 South Korea
 Thailand

*Cooperation Firm

Increase in Global M&A Activity

Global M&A volumes 2002-18 (\$tn)



Number of deals greater than \$10bn

9	9	15	33	48	46	34	23	16	20	18	19	35	55	35	32	44
---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Number of deals greater than \$250mm

939	991	1,333	1,678	2,230	2,765	1,893	1,293	1,789	1,845	1,843	1,912	2,108	2,293	2,164	2,151	2,298
-----	-----	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------

- 2018 Global M&A deal value = \$4.1 trillion USD
- Third highest year on record
- Driven in part by “megadeals” involving over \$10 billion
- Over 2000 deals greater than \$250 million
- Cross-border activity is a key component
 - 41.9% of 2017 deals involved cross-border M&A

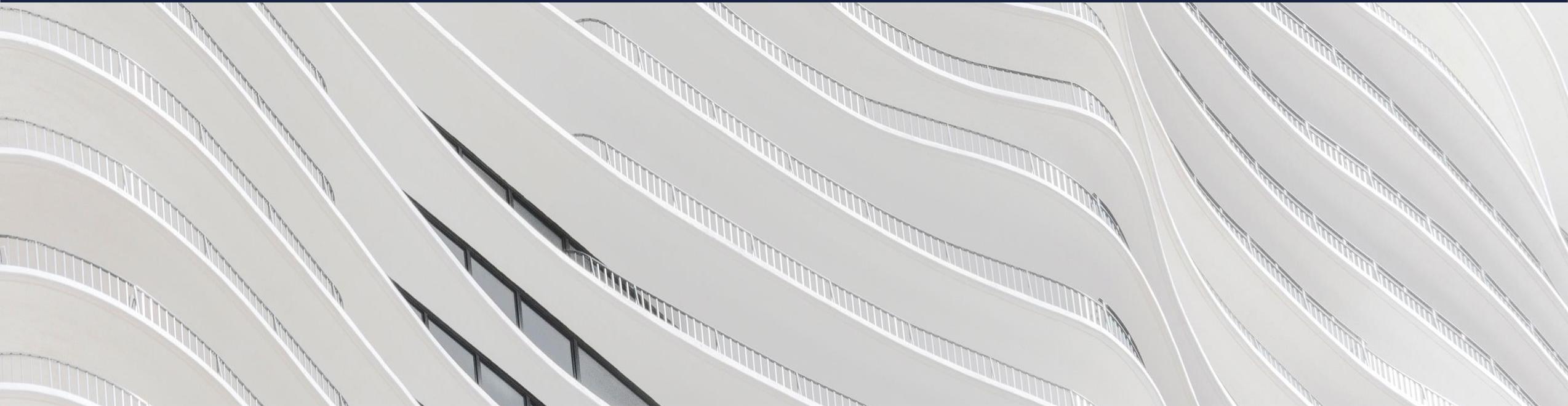
Source: JP Morgan 2019 Global M&A Outlook

Key Issues for Going Global

- Labor & Employment Considerations
- Data Privacy Regulation
- Legal Professional Privilege
- Global Compliance



Going Global: Labor & Employment Considerations Around the World



Where we're headed

**Political
change /
labor reform**

**Global
mobility /
restrictive
covenants**

**#MeToo
movement /
gender
diversity and
pay equity**

**Contingent
workers /
the future
of work**

**Workplace
data
privacy**

Policy and labor reform: EMEA

France

- Equal pay and sexual harassment reporting requirements

Germany

- Right to return from part-time to full-time
- Expansion of works council co-determination rights

Netherlands

- Updated rules for termination due to economic reasons
- Companies must meet with Works Council re: pay issues

Italy

- Parental leave changes
- Greater penalties for undeclared work and safety breaches

Spain

- Obligations to implement equality plans and record daily working hours
- New trade secrets law to protect companies

Policy and labor reform: APAC

China

- Amendments to PRC Individual Income Tax Law impact expats
- New rules on gender discrimination and the protection of women in the workplace

Japan

- Work-style Reform Bill:
 - Limits on overtime
- Obligation to designate 5 PTO days
- Overtime exemption for “highly skilled professionals”

South Korea

- Labor Standards Act Amendment to reduce working hours
- Minimum wage increase
- Prohibition on workplace harassment

Australia

- Flexible working requirements for award covered employees
- Expanded protections for whistleblowers

India

- On-site childcare facilities required where 50+ employees

Policy and labor reform: Americas

Canada

- Legalization of recreational marijuana
- Pay equity reform

Mexico

- President vows to initiate labor reform
- Ratified freedom of association with respect to unions

Brazil

- Following 2017 labor reforms
 - Significant decrease in labor litigation
 - Outsourcing of core activities now legal
 - Union revenues plummet

Puerto Rico

- Changes to reporting requirements for severance payments
- Must be reported as “exempt wages”

Restrictive covenants – to compete or not to compete?

- No global one size fits all
- Enforceability varies from country to country
- Key themes:
 - Reasonableness
 - Duration
 - Geography
 - Tailored to employee's position and seniority
 - Legitimate business purpose
 - Compensation (including whether or not it can be waived if restriction not enforced, eg, **Germany**)

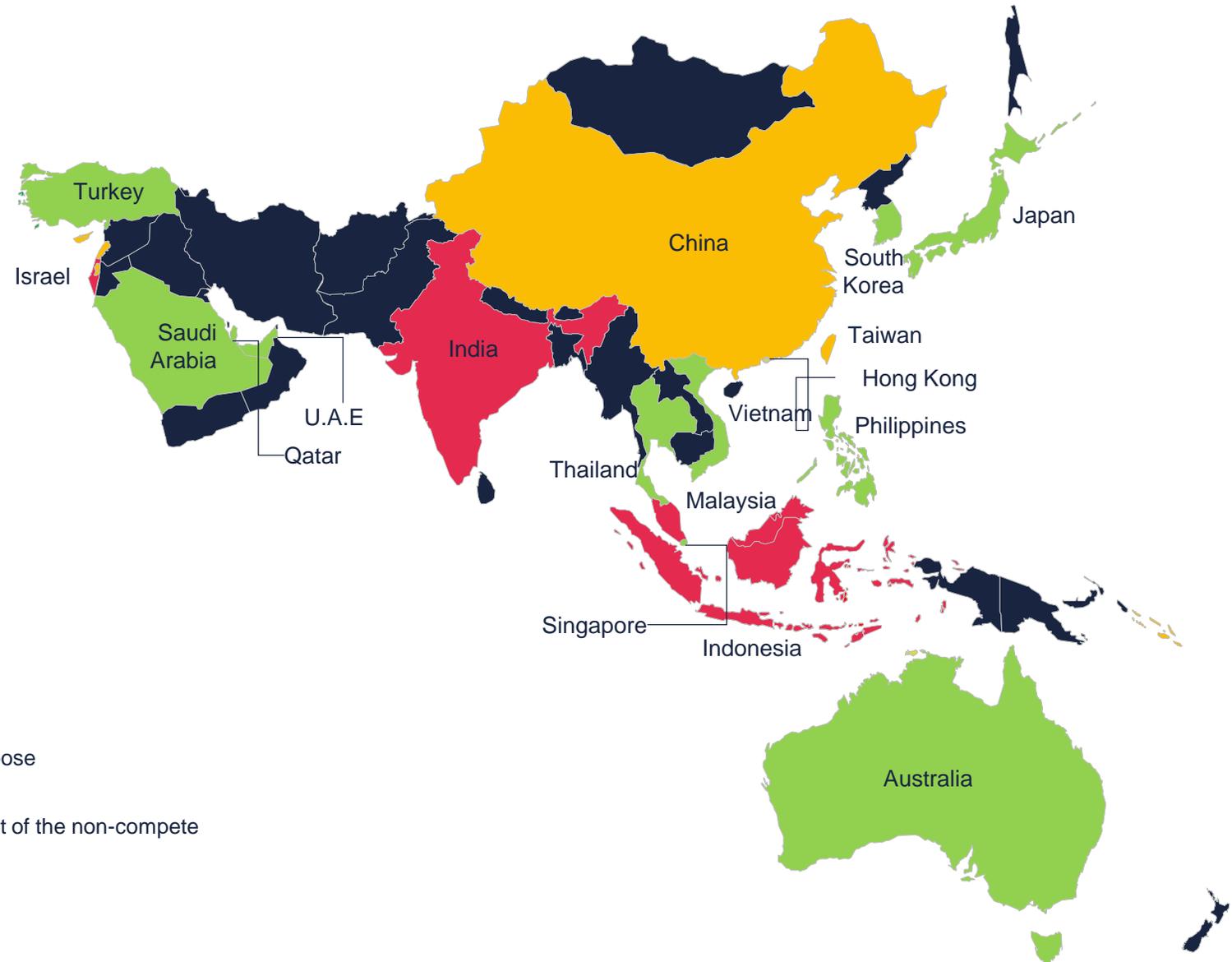


Non-competes: Europe



- Generally enforceable if there is a legitimate purpose (subject to reasonableness restrictions)
- Compensation generally required for enforcement of the non-compete
- Generally not enforceable

Non-competes: Middle East and APAC



- Generally enforceable if there is a legitimate purpose (subject to reasonableness restrictions)
- Compensation generally required for enforcement of the non-compete
- Generally not enforceable

Non-competes: Latin America



- Generally enforceable if there is a legitimate purpose (subject to reasonableness restrictions)
- Compensation generally required for enforcement of the non-compete
- Generally not enforceable

Gender pay equity

Increased focus by lawmakers globally: regulation, transparency, closing the gap, board participation

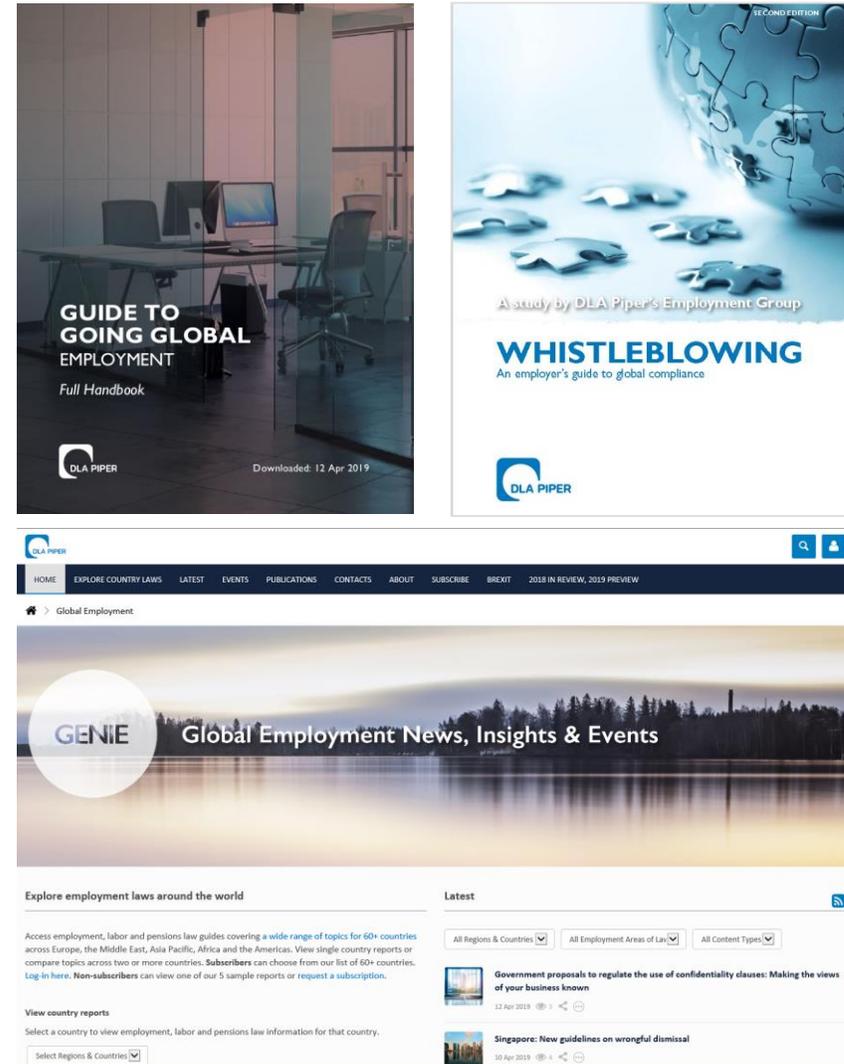
Recent examples

Canada	<ul style="list-style-type: none">• Proposed legislation applicable to federally-regulated employers designed to equalize earning potential of men and women• Ontario: Pay Transparency Act would require reports with information on variations in compensation based on gender (among others), prohibit asking about pay history (effective date of Act postponed and Act is being reconsidered)
France	<ul style="list-style-type: none">• Companies with 50+ employees to publish pay gap annually• 3 years to meet indicators; otherwise, have to set aside a "wage catch-up budget" for women and may be subject to a financial penalty of up to 1% of the company payroll
Germany	<ul style="list-style-type: none">• Gender pay transparency rules introduced in 2017 for companies with 200+ employees
Ireland	<ul style="list-style-type: none">• Proposed: employers with 50+ employees to report on gender pay gap
Netherlands	<ul style="list-style-type: none">• Proposed: impose a legal duty on employers to report on equal pay in the annual report
New Zealand	<ul style="list-style-type: none">• Pay equity and equal pay bill proposed
Spain	<ul style="list-style-type: none">• Obligation to implement gender equality plan and keep record of employee salaries
United Kingdom	<ul style="list-style-type: none">• Mandatory reporting for UK companies with 250+ employees• First reports were due April 2018• 2018: approx. 10,000 companies reported, nearly 78% paid men more than women

Global Employment Resources

We offer a range of additional complimentary services to help our clients reduce risk, improve efficiency and save money, including:

- Access employment, labor and pensions law guides covering a wide range of topics for over 60 countries (and counting) across Europe, the Middle East, Asia Pacific, Africa and the Americas. View single country reports or compare topics across two or more countries with [GENIE](#).
- [Our Employment Guide to Going Global](#), which covers all of the employment and labor law basics in 60 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa.
- [The Labor Dish](#) – our employment blog highlighting legal issues important to US employers.

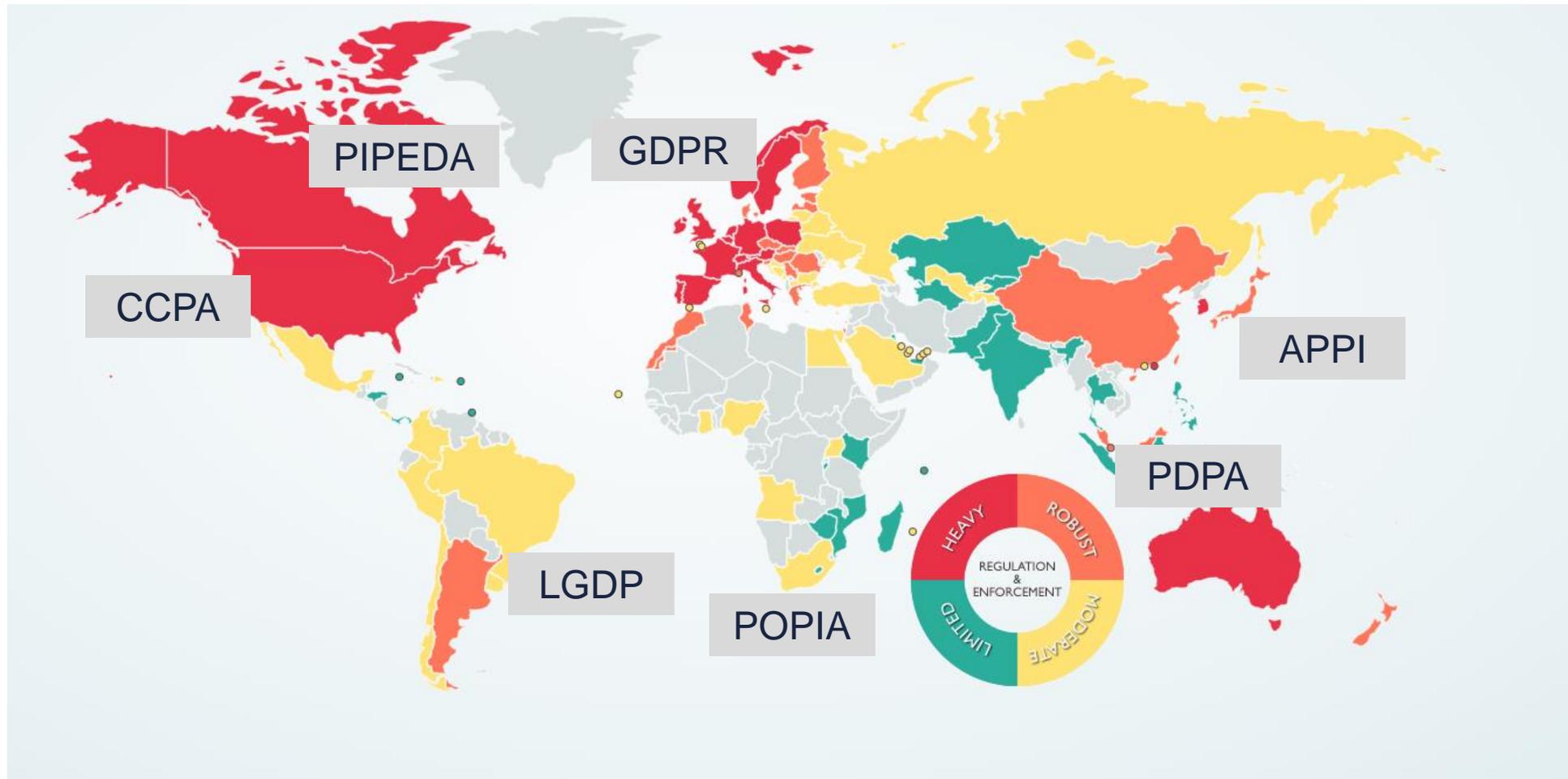


The screenshot displays the DLA Piper website's Global Employment Resources page. At the top, two guide covers are shown: 'GUIDE TO GOING GLOBAL EMPLOYMENT Full Handbook' and 'WHISTLEBLOWING An employer's guide to global compliance'. Below these is a navigation bar with links like HOME, EXPLORE COUNTRY LAWS, LATEST, EVENTS, PUBLICATIONS, CONTACTS, ABOUT, SUBSCRIBE, BREXIT, and 2018 IN REVIEW, 2019 PREVIEW. The main content area features a 'GENIE Global Employment News, Insights & Events' section with a search bar and filters for 'All Regions & Countries', 'All Employment Areas of Law', and 'All Content Types'. Below the filters, there are two news items: 'Government proposals to regulate the use of confidentiality clauses: Making the views of your business known' and 'Singapore: New guidelines on wrongful dismissal'.

Going Global: Data Privacy Around the World



Data Privacy Regulations Around the World



Data Privacy Enforcement

- **103** GDPR-related fines have been imposed in EEA Member States since 25 May 2018.
- Google fined **EUR 50 million** for GDPR violation.
- British Airways fined **\$230 million USD** for 2018 GDPR violation
- Marriott fined **\$124 million USD** for 2018 data breach

GDPR Enforcement Actions in Europe

Number of cases per country and total amount of fines issued (as of June 2019)



GDPR Enforcement Actions in Europe

Biggest Cases per Country (in Euro) (as of June 2019)

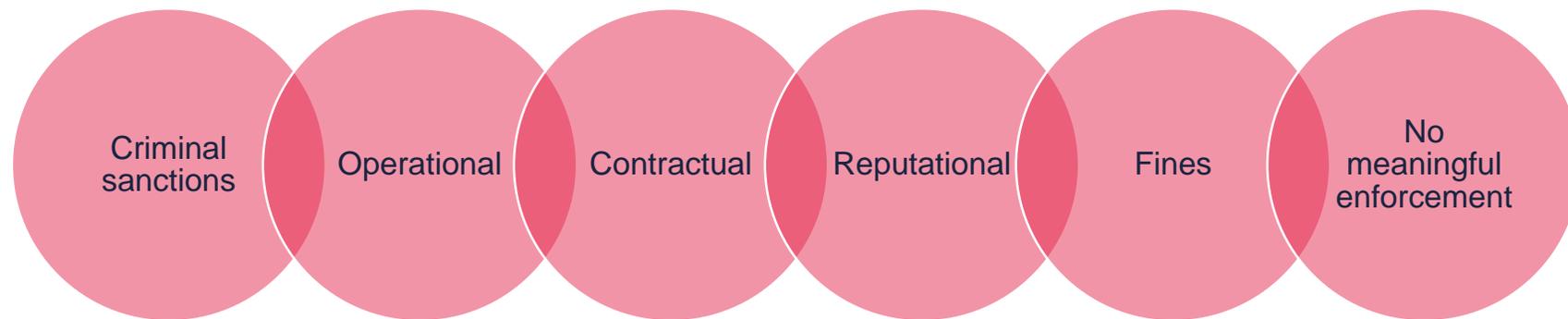


Data Privacy Regulations Are Rapidly Evolving

Regulatory evolution examples

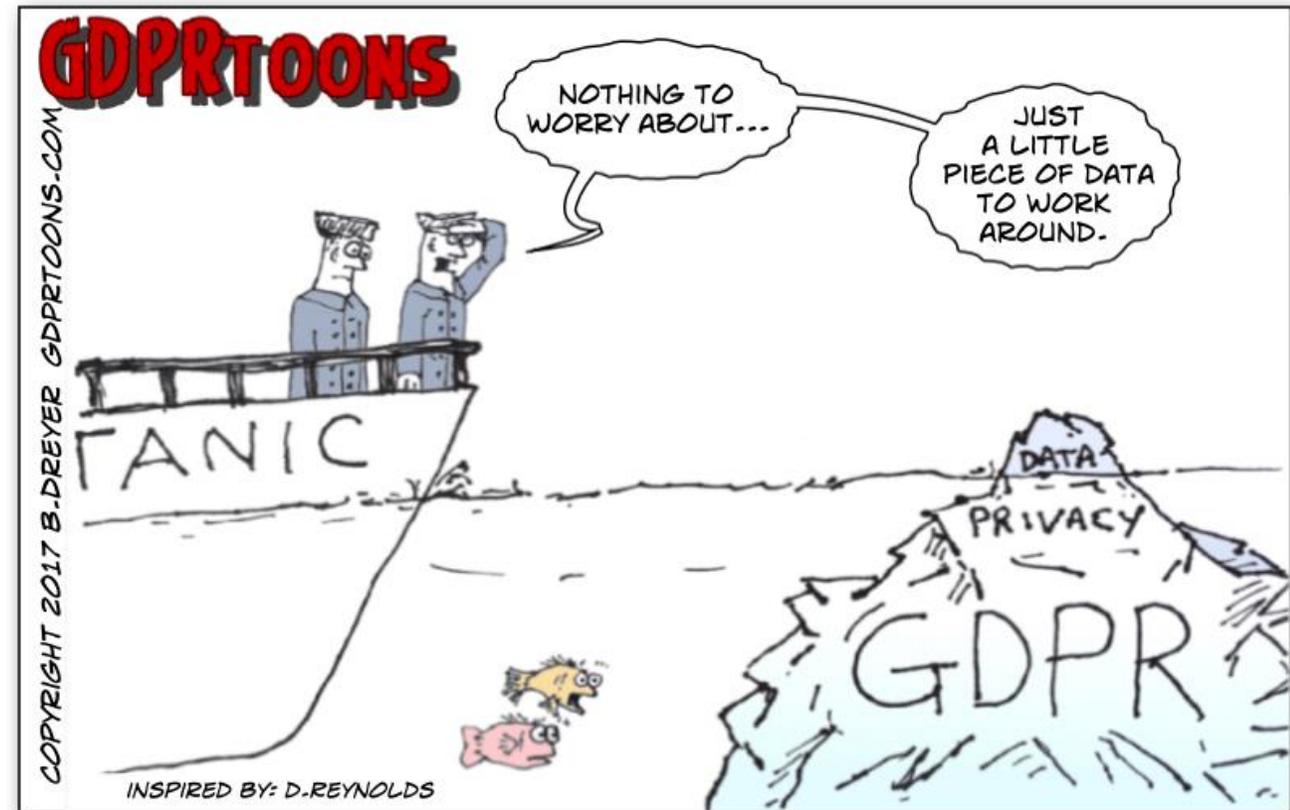
New data privacy law	New cybersecurity law	Ongoing evolution	Changes expected
India	Vietnam	China	China
Thailand	Singapore		Korea
	Australia		Hong Kong
			Singapore

Enforcement evolution... manage the risks on a jurisdiction-by-jurisdiction basis



Data Protection Laws of the World

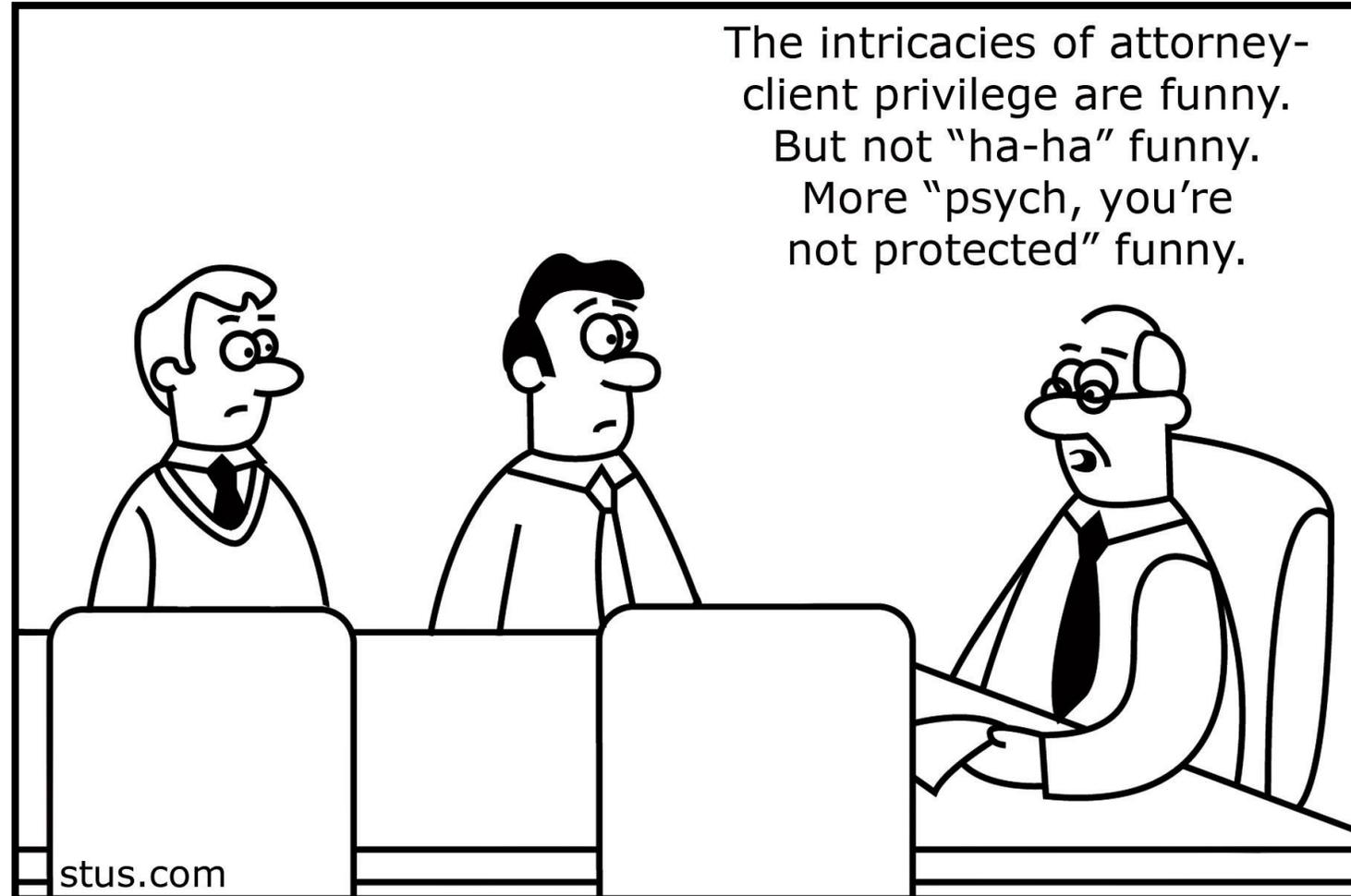
- [DLA Piper Data Protection Handbook](#)



Going Global: Attorney-Client Privilege Around the World



Attorney-Client Privilege Around the World



Attorney-Client Privilege Around the World

- Communications with a foreign lawyer may not be protected.
- Communications between in-house counsel and HR/the business may not be protected.
- Belgium, Greece, Netherlands, Norway, Portugal, UK are the only EU jurisdictions where in-house counsel is protected.
- Use outside legal counsel to maintain privilege for particularly sensitive issues.

Attorney-Client Privilege Around the World

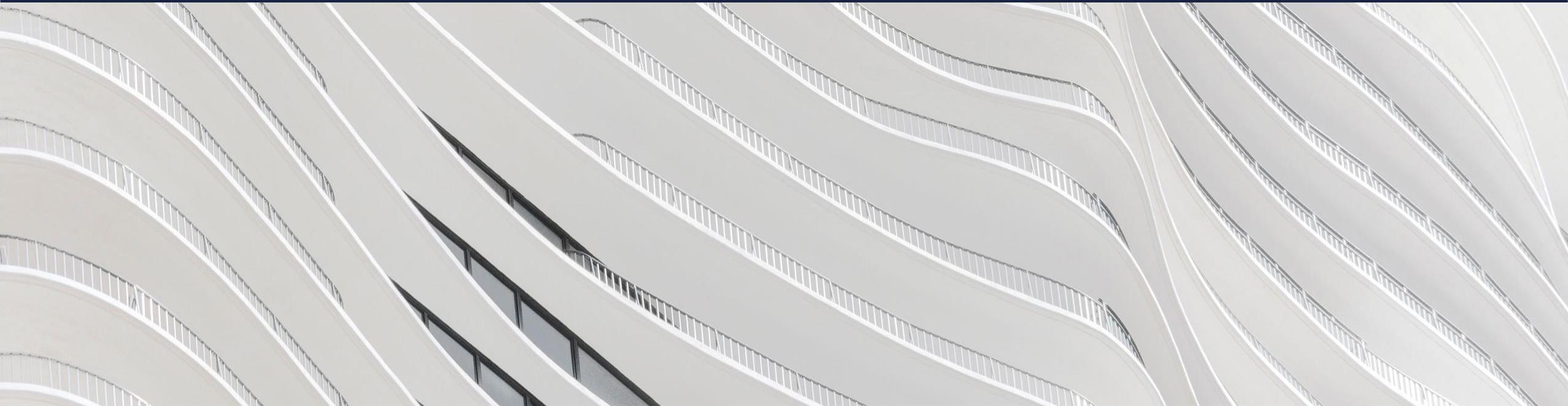
- Outside the EU, concepts of privilege vary even more widely:
 - Common law jurisdictions - where the system is based predominately on the UK (e.g. Hong Kong, Australia and South Africa) a concept of Legal Professional Privilege is recognized and can extend to in-house counsel.
 - In some countries, no privilege per se, but same result can be achieved through confidentiality obligations (e.g. Mexico).
- **Exercise Caution** - May be obliged to disclose a document in one jurisdiction while benefiting from privilege in another. Even close countries can take a different approaches – PRC and Hong Kong.

Attorney-Client Privilege Around the World

- [Global Guide](#)

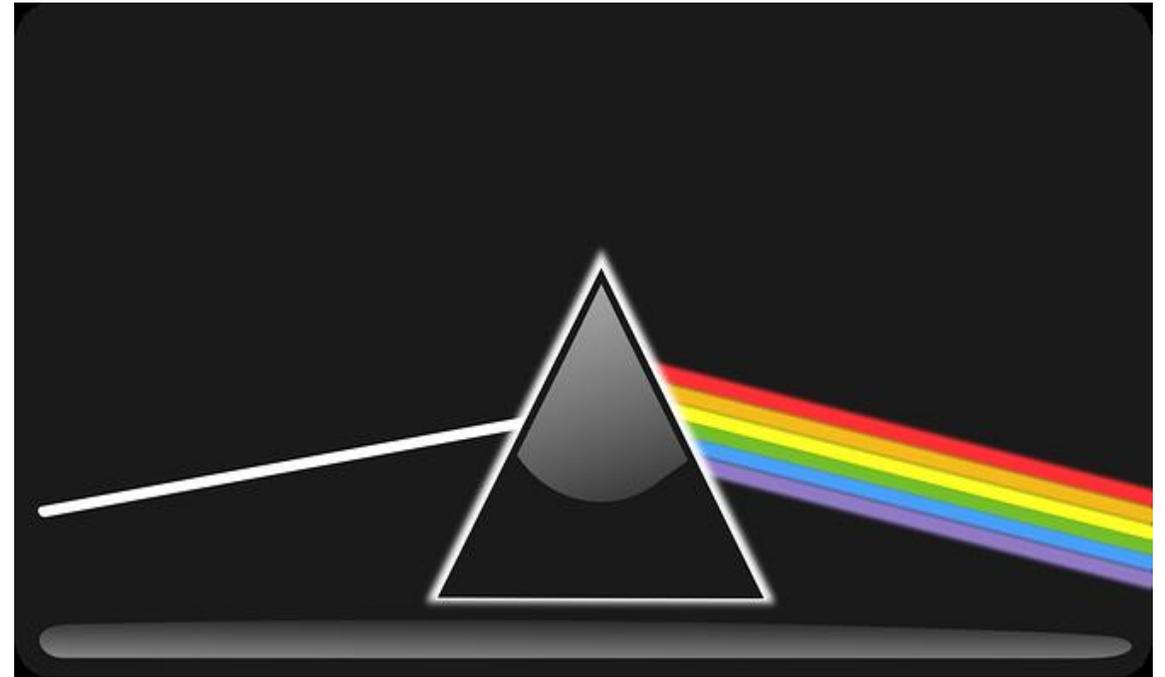


Going Global: Compliance Around the World



Compliance Around the World

- The Global Compliance Prism
 - Programmatic
 - Risk
 - Industry/Sector
 - Geography



Compliance Around the World – Global Risks

M&A Due Diligence

FCPA/Bribery

Third Party Due Diligence

Compliance Around the World – M&A Due Diligence

Pre-Acquisition Due Diligence

- Develop risk profile for target
- Interview key stakeholders
- Review ABAC reps and warranties
- Review compliance policies and training
- Obtain list of JVs and third party vendors
- Obtain recent risk assessments and internal audits



Compliance Around the World – M&A Due Diligence

Post-Acquisition Due Diligence

- Develop risk-based compliance integration plan
- Update and synthesize policies and training
- Conduct compliance audit to identify gaps
- Implement risk-based training
- Address pre-closing due diligence issues



FCPA Components

Anti-Bribery Provisions



- Ensures that U.S. companies do not commit bribery in foreign countries.
- Does not apply to U.S. government officials, but other statutes criminalize corrupt payments to such officials.

Accounting Provisions



- Requires accurate reporting and recording of all transactions.
- Covers all payments to non-U.S. government officials, regardless of why the payments were made.

Bribery: What Is Prohibited?

The FCPA prohibits U.S. companies from:

corruptly and ***willfully***
offering anything of value
to a government official

for the purpose of influencing the official to secure an improper business advantage.



- Practically speaking, everything a corporation does furthers its business. Thus, any activity performed on a company's behalf may fall within the FCPA's scope.

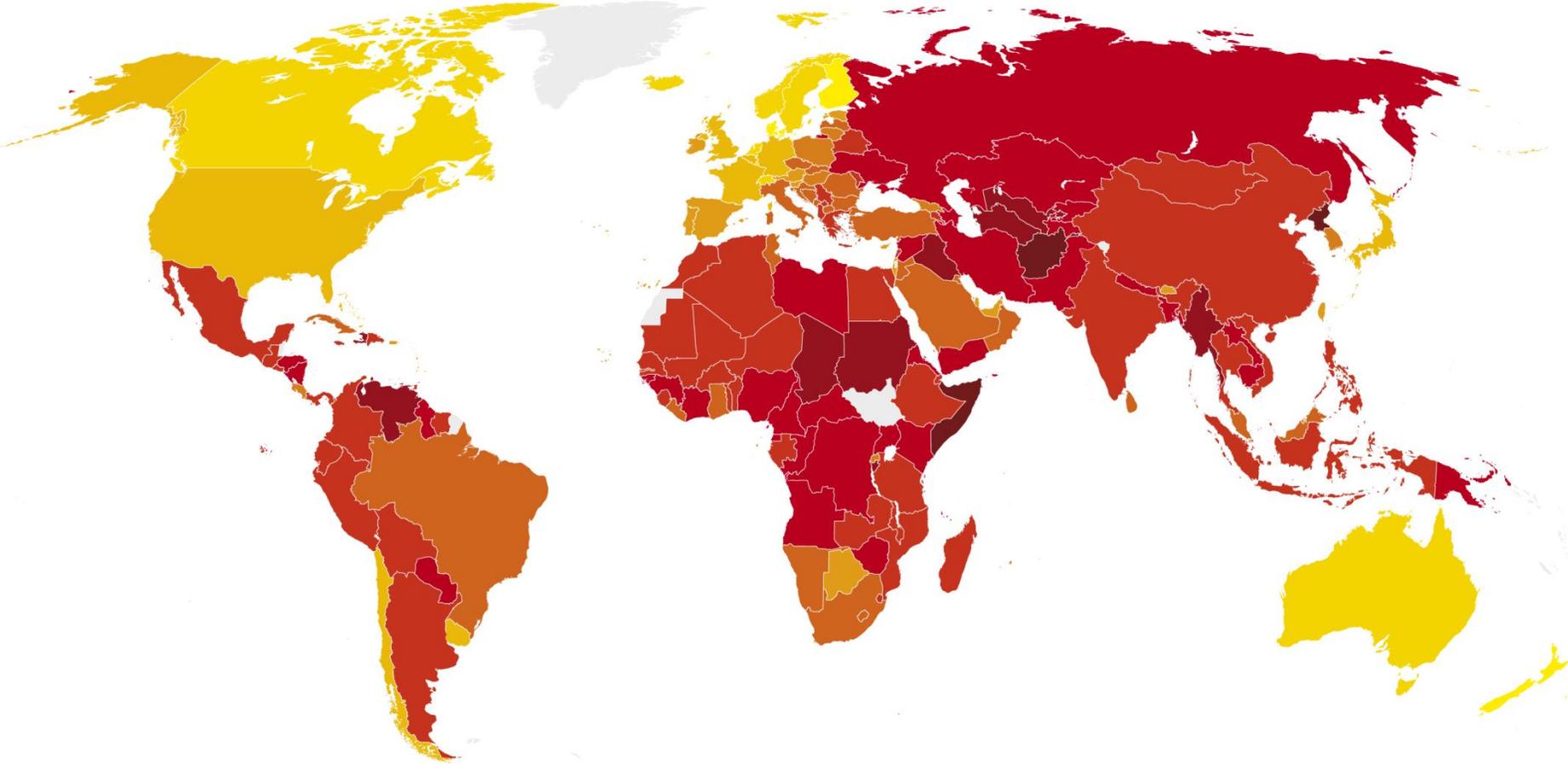
Gauging Risk: A Critical Consideration

Who, where, and how an action occurs can significantly influence FCPA risk.

- ***Who*** is the customer?
 - If a government is a primary customer, the risk is higher.
- ***Where*** is the transaction at issue taking place?
 - Countries with higher levels of corruption require greater due diligence of third-parties.
- ***How*** is the transaction occurring?
 - Agents or joint venture partners increase the risk.

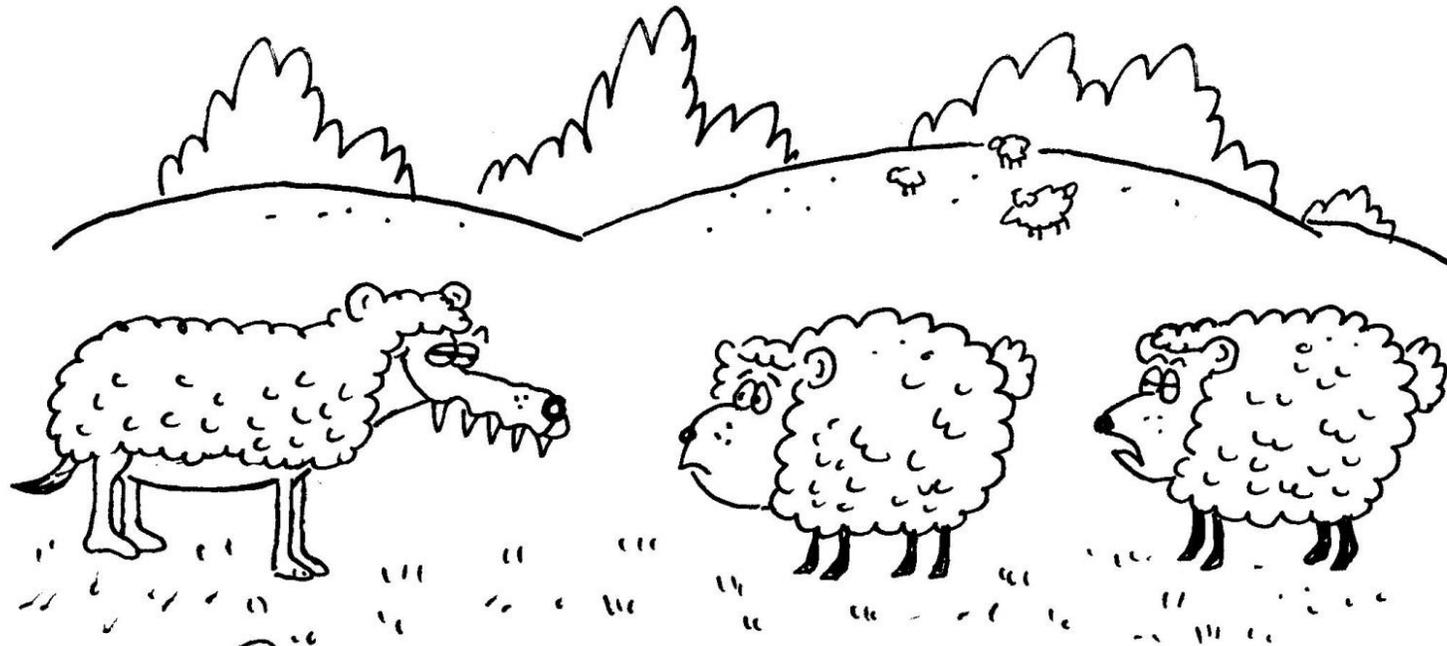


Corruption Risk Around the World



Highly Corrupt Very Clean

Source: Transparency International, 2015 Corruption Perception Index



Dave Carpenter

“Who did the background check on him?”

Compliance Around the World – Third Party Risk

Where is the exposure?

- Agency Relationships
- Distributors
- Franchisees
- Commercial Contracts
- Acquisition Targets
- Joint Venture Partners

Hallmarks of an Effective Third-Party Due Diligence Program

- ✔ Know your vendors
 - Who are they?
 - What is the business rationale?
 - Are they equipped to provide the services?
- ✔ Identify your “high-risk” vendors
 - Conduct appropriate risk assessments.
- ✔ Implement a due diligence protocol
 - Use questionnaires and background checks.
 - Stress the importance of your commitment to ethical and lawful business practices.
- ✔ Include anti-corruption clauses in contracts
- ✔ Audit and monitor vendors consistently
- ✔ Document everything

Ensuring the integrity of the third parties is critical to avoiding and mitigating anti-corruption risk.

Compliance Around the World – Other Issues to Consider

- Trade (import/export & trade agreements)
- Sanctions/OFAC
- Human trafficking/Modern Slavery Act

Available Resources

www.dlapiperintelligence.com

- Knowledge sites that answer legal questions from our clients around the globe.
- Comprehensive guides on topics including:
 - Global Expansion
 - Data Protection
 - Legal Professional Privilege
 - Employment
 - Mergers & Acquisitions
 - Prize Promotions
 - Real Estate
 - Telecommunications
 - Patent Laws
 - Finance Rules of the World
 - Contract Laws
 - Dispute Resolution in the Middle East
 - Media, Sport & Entertainment

Thank you