

COUNTRY COMPLIANCE UPDATES

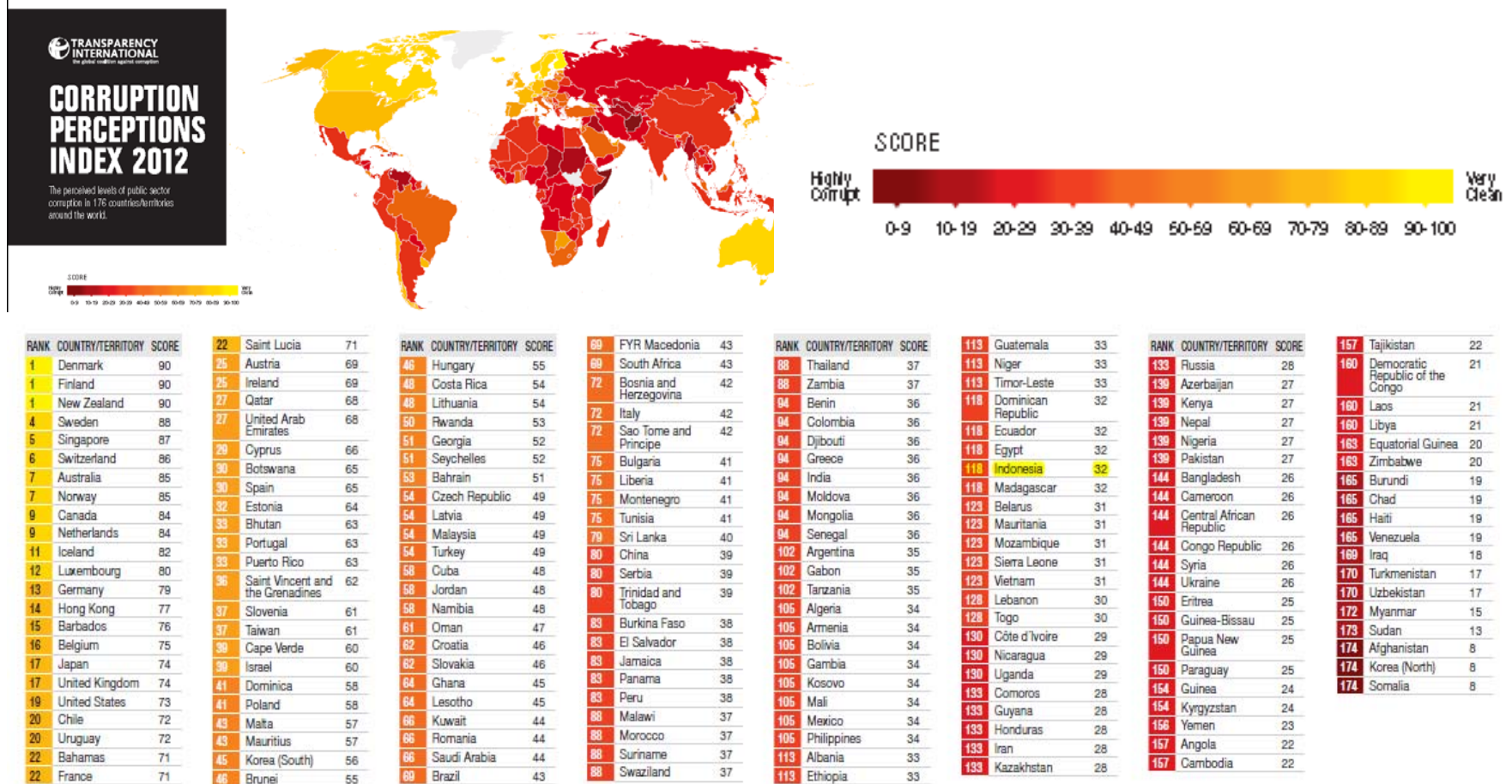
Indonesia

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Transparency International

Transparency International – Results by Country



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State's losses due to corruption in Indonesia: "The Chairman of Financial and Development Supervisory Agency (BPKP) reported that the total State's financial losses due to corruption in 2012 amounting of Rp. 2.6 trillion" (www.tempo.co.id, 11 April 2013)

Indonesian Anti- Corruption Law

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Principal Regulations:

- Law No. 31 of 1999 on the Eradication of Criminal Act of Corruption as amended by Law No. 20 of 2001 (“**Anti-Corruption Law**”);
- Law No. 11 of 1980 on the Criminal Act of Bribery (“**Anti-Bribery Law**”) – old legislation on Anti-Bribery act;
- Law No. 30 of 2002 on the Commission for the Eradication of Corruption (“**KPK Law**”)– which outlines the specific duties and authority of the Corruption Eradication Commission;
- Law No. 8 of 2010 on the Prevention and Eradication of the Criminal Act of Money Laundering (“**Anti-Money Laundering Law**”) – trends in Indonesia show that corruption criminal acts are often followed by Money Laundering criminal acts.

Relevant Authorities for Anti-Corruption Investigation:

- KPK;
- The Public Prosecutor Office/Kejaksaan;
- The Indonesian Police Office/Kepolisian; and
- Indonesian Financial Transaction Reports and Analysis Centre (“**PPATK**”).

Indonesian Anti-Corruption Law – Cont'd

Various Forms of Corruption offences in Indonesia

- Losses to State finances (articles 2 and 3 of the Anti-Corruption Law);
- Bribery and Gratuities (Anti-Bribery Law and articles 5, 6 ,11, 12, and 13 of the Anti-Corruption Law);
- Act of cheating (*perbuatan curang*) (article 7 of the Anti-Corruption Law);
- Embezzlement by abusing power (article 8 of the Anti-Corruption Law);
- Extortion by public servants (article 12 (e), and (f) of the Anti-Corruption Law);
- Conflict of Interest in a procurement process (article 12 (i) of the Anti-Corruption Law).

Indonesian Anti-Corruption Law – Cont'd

(Potential) Loss to the State Finances

- Prohibited actions:
 - the illegal act of enriching himself, another person or a corporation which may create loss to the state's finance or economy (**Article 2 (1) of the Anti-Corruption Law**); and
 - abuse of authority, opportunity or facility vested to him in relation to his position, which may create loss to the state finance or economy, to enrich himself, another person or a corporation (**Article 3 (1) of the Anti-Corruption Law**).
- Very broad range application - the subjects of the Anti-Corruption Law include civil servants, corporations, individuals, and state administrative officials.

Definition of State Finances

- Key element : actions that may incur state losses.
- Varying definitions of state losses and state finances under various regulations
 - Anti-Corruption Law: State Finances covers all state assets in whatever form, either separated or not separated from the State Finances.
 - Recent Development: Constitutional Court Decision No. 77/2011 confirms that State-Owned Enterprises' assets are separated from the state finances.

Indonesian Anti-Corruption Law – Cont'd

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Indonesian Anti-Corruption Law – Cont'd

Bribery

- Key elements of bribery under Anti-Corruption Law (**Article 5 of the Anti-Corruption Law**)
 - Anyone;
 - who gives gifts or promises;
 - to civil servants or state officials;
 - with an intention to cause the recipients to do or not to do something;
 - which is in contravention of his/her (the recipients) obligations or duties.
- The central thrust of Article 5 is the corrupt offering of a gift or gratuity related to a specific action or non-action of the recipient civil servant or state administrative official in contravention of his obligations or duty.
- The giver of the bribery (Article 13 of the Anti-Corruption Law) is (i) every person; (ii) giving a gift or promise to a civil servant; and (iii) with consideration of the civil servant's title or position which is viewed by the giver as vested in the title or position.
- Article 13 suggests that the the giver hopes to gain something from giving the gift or promise or that the gift or promise will result in (for the giver) an “appropriate use” of the civil servant's power of authority.

Indonesian Anti-Corruption Law – Cont'd

Gratuities/Gratifikasi

- Every gratuity given to a government employee or state administrative official potentially is a bribe, but to be an actionable crime it must be given with some connection to the civil servant's position and involve a *quid pro quo* by the recipient to do or not do something in contravention of his obligations or duties. (**Article 12B of the Anti-Corruption Law**)
- Burden of proof: Article 12B requires the recipient of the gratuity to provide proof that the gratuity given to him was not a bribe if the gratuity amounted to Rp. 10 million or more. Currently this translates into approximately USD950 or more.
- Article 12C permits the recipient to avoid any form of prosecution in connection with receiving a gratuity if he reports the gratuity to the KPK in a timely manner (within 30 days). The KPK must then decide if the civil servant can keep the gratuity or whether it belongs to the state. But in practice, the reporting is not a safe harbor for the recipient and the giver if there is "criminal /corrupt intent" (premeditated corruption).
- The definition includes any gift, including gifts of money, goods, discounts, commissions, interest-free loans, travel tickets, lodging, travel tours, free medicine, and other facilities, whether received in Indonesia or abroad or by whatever means.
- Corrupt intent is essential i.e., intent to cause a misuse of office by a government official and/or for a prohibited purpose in contravention of his/her obligations or duties.

Indonesian Anti-Corruption Law – Cont'd

Civil Servants and State Administrators

- Under the Anti-Corruption Law, in addition to the general understanding of civil servants, the definition of civil servants also includes those who receive salary or wages from either:
 - the State or Regional government budget;
 - a company that receives financial aid from the State or Regional government budget; or
 - other corporations financed by or using the facilities of the State or the public.
- According to Law No. 28 of 1999 on the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism, state administrators include the following individuals:
 - State officials in the State's Supreme Institution;
 - State officials in the State's High Institution;
 - Ministers;
 - Judges;
 - Other state officials in accordance with the prevailing regulations; and
 - Other officials having strategic functions in relation to the organization of the state in accordance with the prevailing regulations.

Indonesian Anti-Corruption Law – Cont'd

Liability

- The giver and the receiver are both liable.
- Indonesian law does not provide for safe-harbor provisions whereby certain payments are exempted, whether due to their nature or amount.
- Any person outside Indonesia abetting corruption to take place can also be penalized with the same penal sanction as the corruptor.
- Sanctions i.e., imprisonment up to 20 years or death penalty and fines up to IDR 1 Billion.

Corporate Liability

- A corporation can also be subject to Anti-Corruption Law;
- Charges and penal sanctions are imposed on the corporation and or its management (Article Article 20 of the Anti-Corruption Law).
- Management: an organ that runs the management of a corporation, pursuant to the AoA or those who have the authority and are able to make policies.

COMPLIANCE IN PHARMA COMPANIES

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- 2014 MOH Regulation on Gratification Control Within the MOH.
- Ethical Codes of Pharma Companies Associations.



THANK YOU

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