

Anti-bribery and Compliance in Taiwan

Asia Pacific Pharmaceutical Compliance Congress
COUNTRY COMPLIANCE UPDATES

17 September 2014

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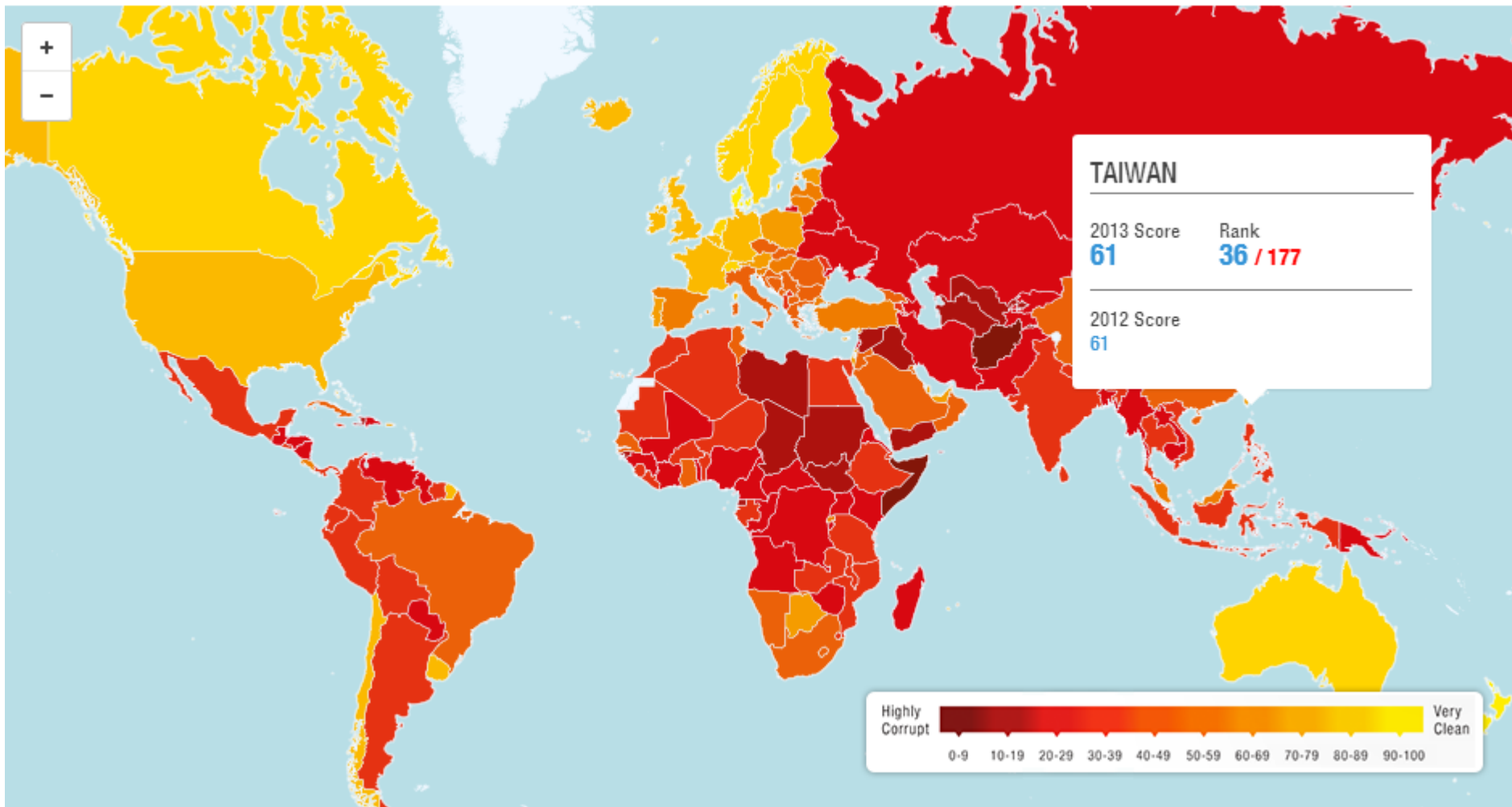
Agenda



Compliance Landscape



Transparency International Corruption Perceptions Index 2013



Transparency International Corruption Perceptions Index 2013 – Asia Pac

Rank	Country/ Territory	CPI 2013 Score
1	New Zealand	91
5	Singapore	86
9	Australia	81
15	Hong Kong	75
18	Japan	74
36	Taiwan	61
46	South Korea	55
94	India	36
94	Philippines	36
80	China	40
102	Thailand	35
114	Indonesia	32
116	Vietnam	31

Score
Very
Clean
90-100



0-9
Highly
Corrupt

Legal Scheme



Anti-Corruption Laws of Taiwan

Prevention of Government Bribery

- Anti-corruption Act (last amended on 23 November 2011)
- Public Official Services Act (last amended on 19 July 2000)
- Public Official Honesty and Code of Ethics (last amended on 30 July 2010)

Anti-Corruption Laws of Taiwan

Prevention of Commercial Bribery

- No specific statute for corrupt conduct in the private sector
- Breach of fiduciary duty provided under the Criminal Code would be applicable

Code of Conduct

- Guidelines Governing the Relationships between Physicians and Vendors (promulgated on 8 September 2006)
- 2012 IRPMA Code of Practice (Industry Code)

Liabilities for Government Bribery



Criminal Liabilities – Anti-corruption Act

Applicability	Applicable to public officials who accept illegal benefits (from Taiwanese or foreigners) and persons who accept illegal benefits to influence public officials, and the givers of illegal benefits
Bribes	Anything of value, such as money, gifts, sex services or even a favor
Official's Conduct for Bribery	Either in violation or not in violation of the public official's duties
Punishment	<p>In violation of the public official's duties</p> <ul style="list-style-type: none">➤ Receiver : Life or minimum of 10 years imprisonment and a fine➤ Giver: Minimum of 5 years imprisonment and a fine <p>Not in violation of the public official's duties</p> <ul style="list-style-type: none">➤ Receiver : 1 to 7 years imprisonment and a fine➤ Giver: Up to 5 years imprisonment and a fine

Public Officials

- Public officials who are granted such legal status under applicable law
- Persons who are commissioned by government agencies to undertake specific public affairs duties

Q: Are healthcare professionals employed by government-owned hospitals considered public officials under the Anti-corruption Act?

- A healthcare professional involved in public affairs based on the power and authority granted by law is deemed a public official.
- A physician providing medical services as part of his or her daily routines is NOT a public official.
- A superintendent, vice-superintendent, director or deputy director of the hospital may be deemed as a public official since he or she has statutory administrative duties and powers.

Q: Is a member of the Pharmaceuticals Committee in a public hospital a public official?

- Different views between the courts
- Sup. Ct. 2010 Tai-Shan No.5990
 - Yes. A member of the Pharmaceuticals Committee in a public hospital is a public official as he/she has de facto influence on procurement matters.
 - Sup. Ct. 2014 Tai-Shan No.945
 - No. The Pharmaceutical Committee runs under a collegiate system and therefore, a single member has no statutory powers on procurement matters .

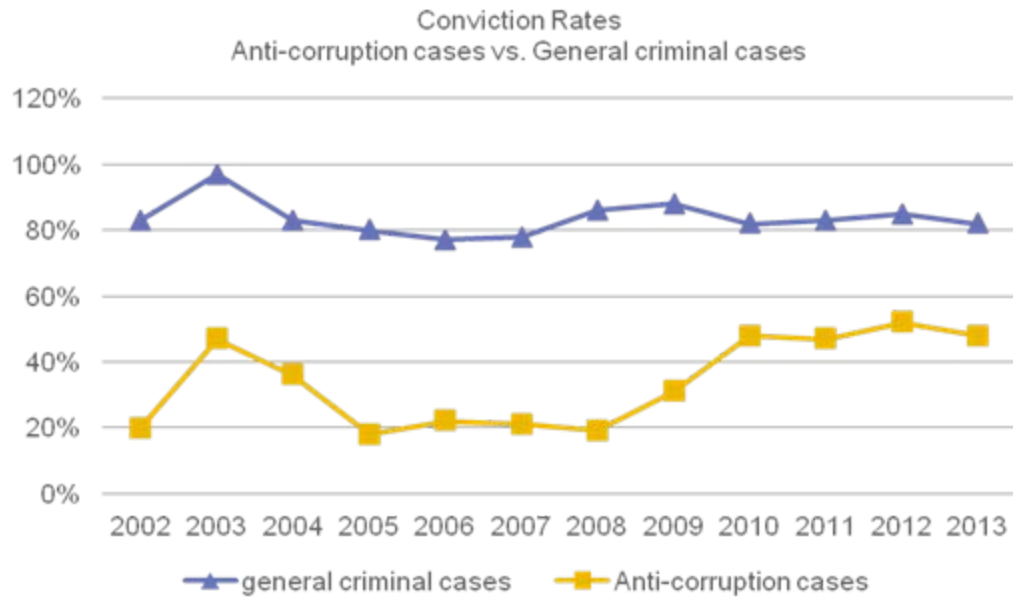
In violation or not in violation of public officials' duties

- Takers and givers will be subject to criminal punishments under the Anti-corruption Act, regardless of whether or not the official's conduct for bribery has violated his or her duty.
- An official's conduct does not violate his or her duty if such conduct is within the public official's proper scope of authority and/or discretion. In other words, the conduct would have occurred with or without the corruptive bribe.

Enforcement of Anti-corruption Act in Taiwan

- Prosecutors are very aggressive in investigating and prosecuting corruption cases. Compared to other kinds of crime, however, bribery conviction rates are quite low due to evidence collection difficulties to prove quid pro quo relationship.
- The Taiwan government does not focus on any specific industry to enforce the Anti-corruption Act. As such, the Pharmaceutical and Medical Device industries are not subject to higher scrutiny.

Conviction Rates of Bribery



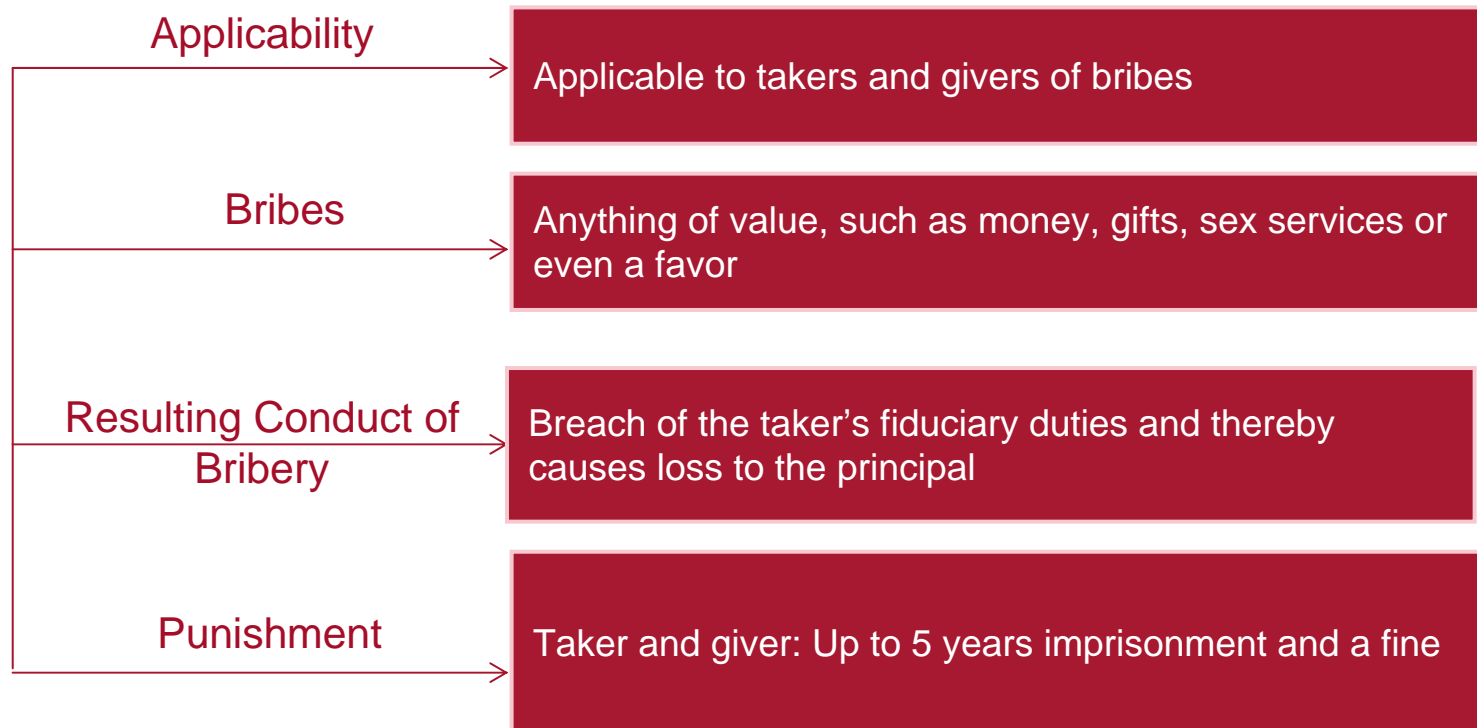
Permitted Benefits – Public Official Honesty and Code of Ethics



Liabilities for Commercial Bribery



Breach of Fiduciary Duties under the Criminal Code



Application in the Pharmaceutical Sector

- Healthcare professionals employed by private hospitals who have accepted bribes in breach of their work duties may be liable for breach of fiduciary duties under the Criminal Code.
- A briber will be deemed an accomplice of the bribe-taker and may be subject to the same criminal penalty.
- No notable precedent relating to the pharmaceutical or healthcare sector has been published.

Developments of Legislation

- A bribery scandal between a reputable Taiwanese enterprise and its vendors was reported in January 2014. Therefore, legislators were urged to enact a Commercial Anti-Bribery Act for the private sector so as to impose harsher punishments on bribery acts within the private sector.
- The draft of the Commercial Anti-Bribery Act is still under discussion and there is no indication about when this legislation will be passed.

Code of Conduct



Physician's Code of Conduct – Guidelines Governing the Relationships between Physicians and Vendors

- Principles for physicians' accepting of gifts, participating in professional meetings and conducting research sponsored by pharmaceutical or medical device companies, and those for the physicians' provision of consulting services to vendors
- A non-compulsory moral code

2012 IRPMA Code of Practice

- Promulgated by the ROC International Research-Based Pharmaceutical Manufacturers
- Updated in 2012 based on the IFPMA Code of Practice 2012 version
- Setting forth standards for the ethical promotion of pharmaceutical products to healthcare professionals and member companies' interactions with healthcare professionals, medical institutions and patient organizations

Notable Issue – Cultural Courtesy Gifts (1)

- It is Taiwanese custom to offer gifts to friends on traditional festivals (e.g., Moon Festival) or cash on the wedding or funeral of a friend or his or her family.
- Offering such gifts or cash to an HCP within a value (traditional festival - NT\$ 500; wedding or funeral - NT\$3,500) was allowed before the amendment to the IRPMA Code of Practice in 2012.

Notable Issue – Cultural Courtesy Gifts (2)

- Under the 2012 IRPMA Code of Practice, any payments in cash or cash equivalents (such as gift certificate) to a healthcare professional for whatever reason is expressively prohibited. Therefore, offering cultural courtesy gifts to HCPs is no longer allowed.

Questions



Thank you