

JOSH WALLENSTEIN





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Josh Wallenstein is an accomplished attorney and compliance expert. He is the Managing Member of The Wallenstein Law Group, a boutique legal practice specializing in business, compliance, and general legal matters headquartered in Houston, Texas. Josh has served as outside counsel in engagements across the globe for a variety of industries. He offers his clients practical, no-nonsense solutions to a wide variety of legal concerns. Josh developed this approach from almost 20 years of global legal, compliance, and risk management experience. Additionally, he has successfully negotiated with US and international enforcement agencies and with multiple monitors imposed by the US Department of Justice.

During his law studies, Mr. Wallenstein interned at the United Nations' International Criminal Tribunal for Rwanda (the United Nations) and Inter-American Court of Human Rights (the Organization of American States).

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19TH ANNUAL RYDER SCOTT RESERVES CONFERENCE

ETHICS IN INTERNATIONAL TRANSACTIONS

JOSH WALLENSTEIN

THE WALLENSTEIN LAW GROUP





AGENDA

- Ethics and the Law
- Anti-corruption Laws and the Foreign Corrupt Practices Act
- Sanctions
- Antiboycott
- ESG

ETHICS AND THE LAW

Ethics and compliance are often lumped together, but as terms, they are not interchangeable.

- Compliance refers to abiding by the law, rules, or policies.
- Ethics means doing the right thing, regardless of the law.

But how do these concepts work together?

We use **compliance** measures to *promote ethical behavior*.



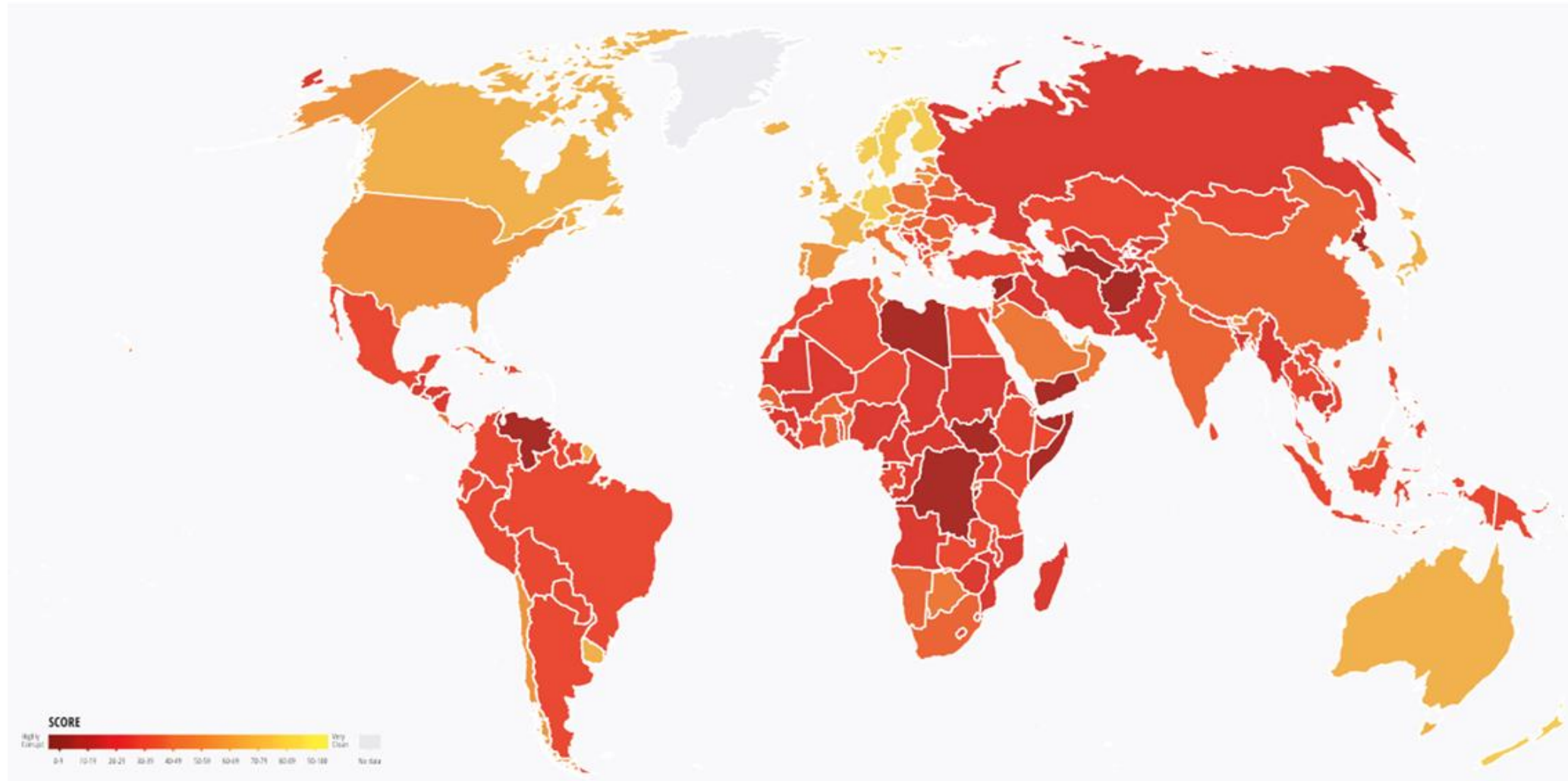
ANTI-CORRUPTION

"Integrity is the foundation of a successful and sustainable business. It's not just about complying with the law, but about doing what's right, even when no one is watching. A commitment to anti-corruption is not only a moral obligation, it's also good for business."

- Paul Polman, former CEO of Unilever



GLOBAL PERCEPTIONS OF CORRUPTION



ANTI-BRIBERY & ANTI-CORRUPTION

Bribery is a crime ... everywhere!

Nearly every country in the world prohibits bribery of government officials.

Many countries (the number is increasing) also have extraterritorial reach, making it illegal to bribe government officials in other countries (foreign officials).

Commercial bribery (bribery of private parties) is also illegal in most countries.

Some countries also target companies that “fail to prevent” bribery.

Some examples of anti-bribery laws across the world:

- Foreign Corrupt Practices Act (*USA*)
- UK Bribery Act (*UK*)
- Sapin II (*France*)
- Clean Companies Act (*Brazil*)
- General Law of the National Anti-Corruption System;
- General Law on Administrative Accountability (*Mexico*)
- Law No.1/2013 (*Bahrain*)
- Article 307, Penal Code (*Iraq*)
- Anti-Bribery Law (Royal Decree No. M36 of 29 Dhu al Hijah 1412) (*KSA*)
- UAE Federal Penal Code (*UAE*)
- Anti-Unfair Competition Law (*China*)



ANTI-CORRUPTION REGULATIONS

Three basic universal principles:

1. Don't bribe,
2. Maintain accurate and complete books and records, and
3. Employ a system of internal controls to ensure accuracy and prevent illegal activity.



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DEFINITION TIME

Anything of Value?

Bribes are not just unmarked bills in brown envelopes. A bribe can literally be “*anything of value.*”

Consider the following examples of “non-traditional” bribes:

- Gift cards
- Charitable donations
- Moon cakes
- Lavish gifts or travel
- Jobs or internships
- Electronics
- Jewelry



U.S. ENFORCEMENT - FCPA

What is the FCPA?



The Foreign Corrupt Practices Act, a U.S. law prohibiting both

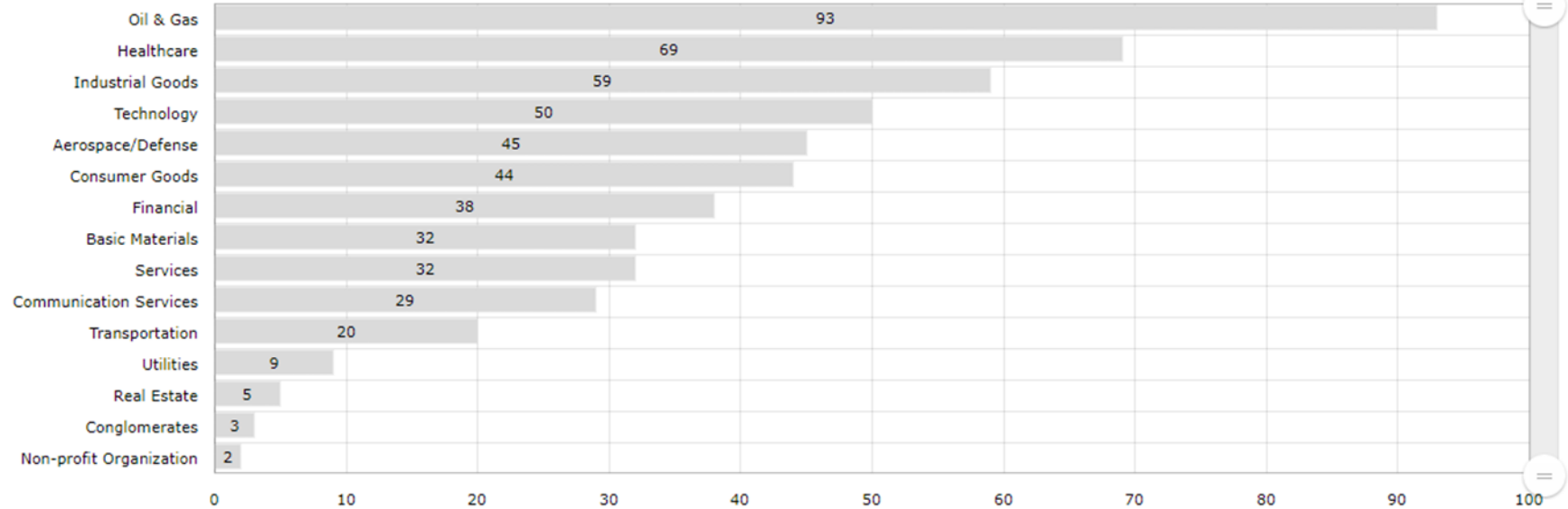
- (1) U.S. companies, and
- (2) foreign companies with a U.S. “nexus”

from engaging in bribery and other corrupt behavior or practices when doing business abroad.



ENFORCEMENT BY INDUSTRY

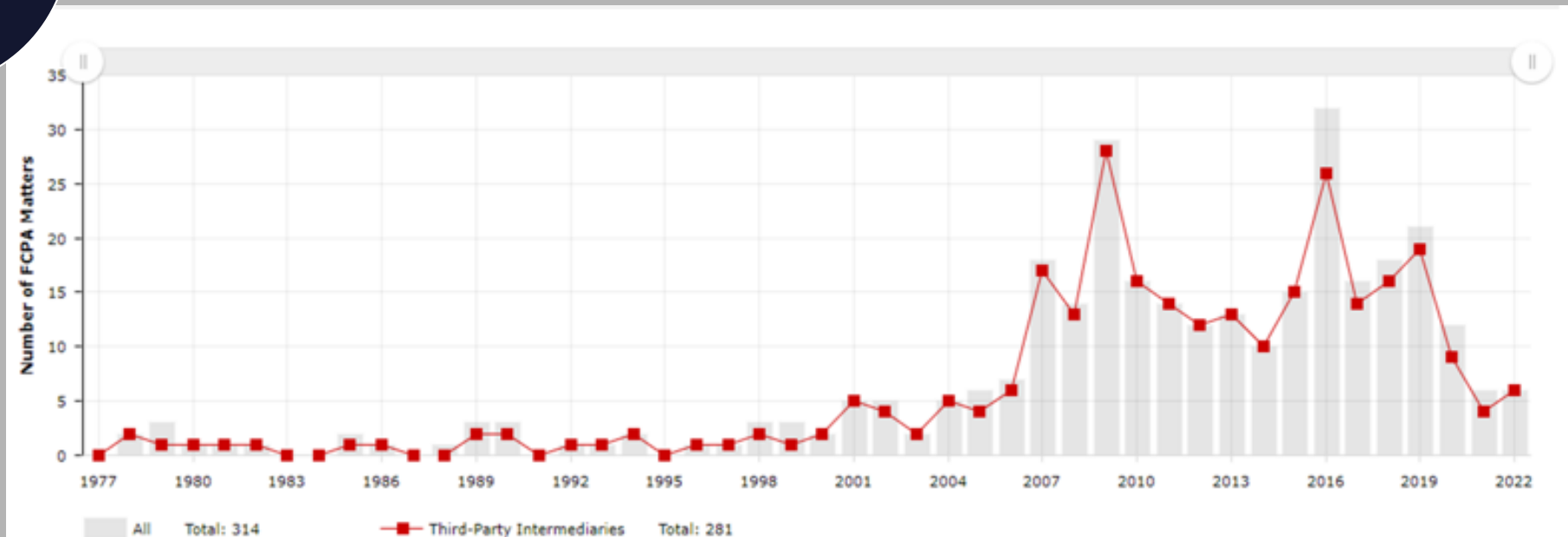
Industry Classifications of FCPA Matters



THIRD PARTIES

ACTIONS
INVOLVING
THIRD
PARTIES

Why do we care about due diligence on third parties?



...because that's the way funds are most easily extracted.

BOOKS AND RECORDS

DIVISION OF INVESTIGATION, U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

Record from: *Alcatraz* [Address] *Alcatraz, Cal*
On the above line please state where Police Department, Sheriff's Office or County Jail

Aug 22, 1934
Charges: *No Income Tax*
Disposition of case: *10 yrs*

Residence: *Chicago, Ill*
Place of birth: *Brooklyn, N.Y.*
Nationality: *Ital-American*
Criminal specialty: *Hoodlum*
Age: *35* Build: *Stocky*
Height: *5-7* Comp: *OK* Hair: *Blk*
Weight: *224* Eyes: *Brown*
Scars and marks: *Lgs. jagged cut scars on left side of neck.*

CRIMINAL HISTORY

NAME	NUMBER	CITY OR INSTITUTION	DATE	CHARGE	DISPOSITION OR REMARKS
<i>Alphonse Capone</i>	<i>40886</i>	<i>Alcatraz, Cal</i>	<i>1934</i>	<i>Income Tax</i>	<i>10 yrs</i>

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THE FCPA AND ETHICS

How does the FCPA promote ethics?

- Ensures that the DOJ pursues companies that bribe.
- Requires accurate recordkeeping to combat corruption. (Indirectly helps with fraud, money laundering, and other financial crimes.)
- Incentives:
 - companies to implement anti-corruption policies to ensure compliance.
 - other countries around the world to adopt similar laws to promote ethical business transactions worldwide.



ECONOMIC SANCTIONS (TREASURY)

What are economic sanctions?

- Economic sanctions operate as a barrier to trade and economic relations to achieve a variety of governmental objectives, such as:
 - Diplomatic or political objectives
 - National security objectives
 - Humanitarian objectives
 - Law enforcement objectives
- Sanctions are often used to influence the behavior of targeted country or entity...usually in response to actions that are deemed a threat to international peace or security.

What is an embargo?

- Comprehensive economic sanctions regime that effectively halts all trade and financial transactions with a specific country.



TYPES OF OFAC SANCTIONS

Sanction Type	Explanation
Country-based sanctions	Embargoes targeting countries and the individuals and entities “ordinarily resident” within that country.
SDN List-based sanctions	Specially designated nationals (SDN) lists targeting specific individuals & companies (and what they control).
Non-SDN listed sanctions	Lists focusing on more narrow targets (e.g., specific activities or uses, industries, sectors, regions, financing terms, or products)

OFAC REGULATIONS



OFAC released
*A Framework for Compliance
Commitments*
in May 2019.

OFAC assesses compliance with the Framework as an aggravating or mitigating circumstance, tracking a violation against the Framework.

ERGO...

A strong compliance program in line with the Framework is a key factor in avoiding OFAC enforcement actions.

- **Management Commitment**
- **Risk Assessment**
- **Internal Controls**
- **Testing and Auditing**
- **Training**

EXPORT CONTROLS (COMMERCE, STATE)

In addition to OFAC sanctions, other U.S. government agencies (and other governments) ban or control the export of: a) certain products and b) their use in all or some countries.

- Commerce (BIS): U.S. Export Administration Regulations (EAR)
- State: the International Traffic in Arms Regulations (ITAR)
- Others (e.g., Nuclear Regulatory Commission)

The control may be due to:

- Chemical & biological weapons; Non-Proliferation; National Security; Regional Stability, Arms conventions; Crime Control ; Anti-terrorism.

Controls may require licenses, and a transaction may not proceed without the required licenses (or an exemption from licensing requirements).



HOW DO SANCTIONS PROMOTE ETHICS?

Sanctions are weapons of U.S. foreign policy, a demonstration of U.S. ethics. Sanctions thus:

- Create impediments for individuals, organizations, or countries to engage in sanctionable behavior.
- Signal to the international community as to acceptable (and unacceptable) behavior → reinforcing ethical standards and norms.



U.S. ANTIBOYCOTT REGULATIONS



Two Sets of Regulations

The Export Administration Regulations (“EAR”) and Internal Revenue Code (“IRC”) both contain Antiboycott provisions to:

- Prevent U.S. companies (and their subsidiaries) from participating in foreign boycotts that the United States does not sanction, and
- Keep U.S. companies from being used to implement foreign policies of other nations which run counter to U.S. foreign policy.

U.S. ANTIBOYCOTT REGULATIONS

Export Administration Regulations

Prohibit certain conduct, such as agreements to refuse to do business with Israel or with blacklisted companies.

Internal Revenue Code

Doesn't "prohibit" certain conduct but denies foreign tax benefits for taxpayers that engage in certain activities that further a U.S.-unsanctioned boycott.

Both sets of regulations require both (1) reporting and (2) non-compliance.



ARAB LEAGUE BOYCOTT OF ISRAEL

Primary Boycott - *Prohibits the members of the Arab League, including the states themselves and their companies and individual persons from conducting any commercial, financial or trade dealings with Israel.*

“Arab states and Arab companies shouldn’t do business with Israel or with Israeli companies.”

Secondary Boycott - *Requires the “blacklisting” of any company worldwide (regardless of place of registry/incorporation) that conducts any commercial, financial or trade dealings with Israel.*

“Arab states and Arab companies shouldn’t do business with companies that do business with Israel.”

Tertiary Boycott - *Extends the “blacklist” to any company worldwide that conducts business with a company that is blacklisted under the Secondary Boycott.*

“Arab states and Arab companies shouldn’t do business with companies that do business with companies that do business with Israel.”



U.S. POLICY

Current U.S. policy on the Arab League Boycott of Israel:

- The United States recognizes that a *“primary boycott”* is a *legitimate tool* of international trade and politics.
- The *secondary and tertiary boycotts* attempt to *improperly regulate* the behavior of U.S. nationals and companies.



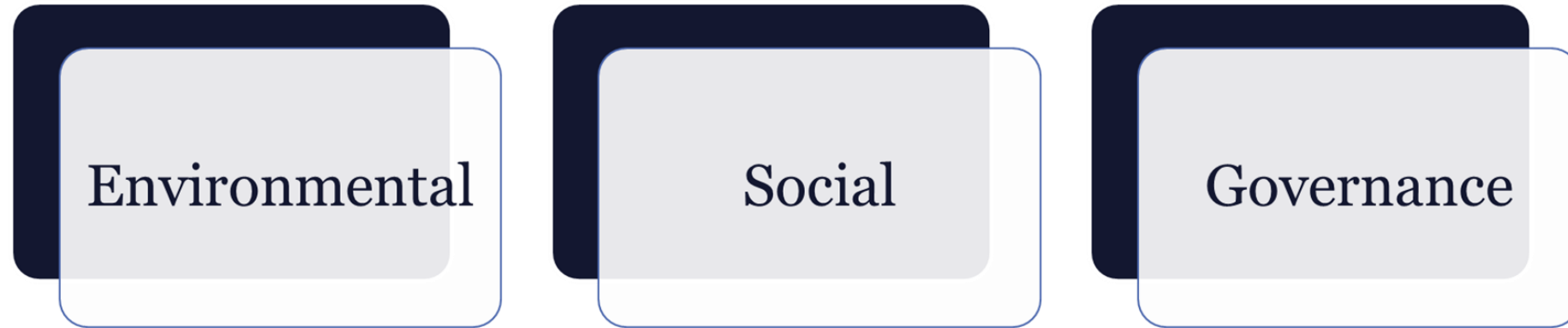
HOW DO ANTIBOYCOTT REGULATIONS INFLUENCE ETHICS?

- Promotes free trade and undermines discrimination.
- Balances a recognition of foreign states' rights with the U.S.'s support of Israel*.

* A United States view, based in part on its support of democracy; its intolerance of antisemitism; and its strategic alliances.



ESG



What is ESG?

- A set of principles and regulations that relate to environmental, social, and governance issues.
- An attempt to represent a stakeholder-centric (as opposed to shareholder-centric) approach to doing business:
 - Environmental: climate change, carbon emissions reduction, deforestation, water pollution
 - Social: gender and diversity inclusion, human rights, community relations
 - Governance: board and executive compensation and management, political contributions, lobbying, donations

HOW DOES ESG INFLUENCE ETHICS?

- ENVIRONMENTAL: reducing the carbon footprint, conserving resources, and reducing waste are beneficial to society as a whole
- SOCIAL: building relationships with all stakeholders, including the communities in which companies operate, prioritize society over short-term profit
- GOVERNANCE: promoting accountability, integrity, and responsible decision-making through accuracy and transparency



KEY TAKEAWAYS

Anti-corruption laws, sanctions, antiboycott regulations, and ESG considerations promote transparency, accountability, fairness, and responsible behavior.

1. Anti-corruption laws prevent bribery and other corrupt practices in international transactions.

2. Sanctions penalize unethical or immoral regimes and specific bad actors.

3. Antiboycott laws prevent companies from engaging in unlawful discriminatory practices.

4. ESG holistically inform corporate conduct in the context of international business.

These measures therefore promote ethics in international business transactions.





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