

Compliance Issues in Asia

October 14, 2011

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Fraud and Corruption in the news

W. Columbia medical supply settles false claims
Columbia, South Carolina... settled with the federal government that it... medical supplies that were not... Medicare would pay... \$60,000,000 in... never delivered.

Former U.S. Army Reserve Major sentenced to 70 months in Prison in Connection with Bribes Involving DOD Contracts in Iraq
A former U.S. Army Reserve Major was sentenced to serve 70 months in prison... pay \$225,000 in restitution to the... after pleading guilty to conspiracy... charges involving U.S. Department... contracts at Camp Victor... DOJ contract amount.

DOJ Recovers \$2.4 Billion in False Claims Cases in Fiscal Year 2009
WASHINGTON, Oct. 13 (AP) — The Justice Department... recovered \$2.4 billion in... cases in fiscal year 2009... cases involving... largest sum recovery of... cases in... substantially strengthened the...

Former U.S. Army Reserve Major sentenced to 70 months in Prison in Connection with Bribes Involving DOD Contracts in Iraq
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FBI to 'Fast Track' Prosecutions of White Collar Crime
Federal Bureau of Investigation agents and Justice Department prosecutors are trying to "fast track" some... white collar criminal prosecutions amid public outcry over... the global financial crisis, according to FBI Director Robert... Mueller.

China Milk Scandal Exposes 'Failure' in Food-Sourcing System
Sept. 28 (Bloomberg) — China's milk scandal... to how companies that date back... raise concerns about... chemical contamination in the country's... food industry, according to analysts and lawyers.

Ex-school employee sentenced for taking kickbacks
WILKES-BARRE, Pa. — A former employee at a... northeastern Pennsylvania technical school... months in federal prison for taking kickbacks... contractor.

Rio Tinto's Hu Sentenced to 10 Years Jail on Secrets (Updated)
March 29 (Bloomberg) — Rio Tinto... the Australian executive who led the... Chinese... was sentenced to 10 years in... to... after... right of taking... from... and... commercial assets.

China Milk Scandal Exposes 'Failure' in Food-Sourcing System
Sept. 28 (Bloomberg) — China's milk scandal... to how companies that date back... raise concerns about... chemical contamination in the country's... food industry, according to analysts and lawyers.

Sources: Associated Press, Bloomberg.com, Department of Justice, FBI, and The Wall Street Journal

Regulatory Trends

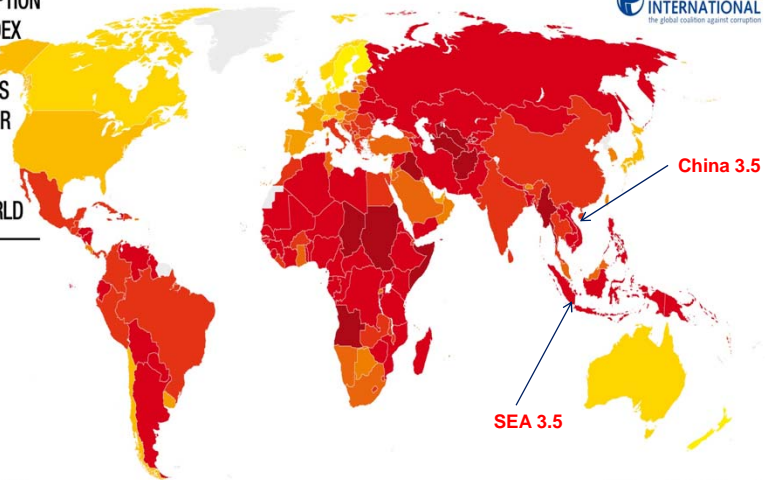
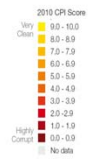
- FCPA enforcement actions continue to increase with the US enforcement authorities pursuing FCPA cases aggressively
- CFPOA actions continue to rise following international criticism of Canada's enforcement regime. A recent case involving a Canadian company has set a precedent which could be significant for a Canadian Company.
- UK Bribery Act came into effect July 1st, 2011, with the first action already settled and a larger action in motion, it is expected the Serious Fraud Office ("SFO") will be aggressive in pursuing large corporations.
- The DFA continues to strengthen the tools US Regulators have to prosecute for non-compliance
- Anticorruption prosecutions by local authorities in emerging markets has been increasing in the past decade
- Between 2005 and 2010, for example, the Chinese recovered US\$4.62 billion in anti-bribery and graft prosecutions, with 119,000 corruption cases investigated in 2010 alone*. Multinational entities are now under more scrutiny than ever in these markets, and local law enforcement authorities are demonstrating a willingness to piggyback off of U.S. FCPA enforcement actions
- Increase in cross border co-operation between regulators

* See "Bribery and Corruption on the Rise in 2010," *China Daily*, January 6, 2011; "Fighting Corruption is Party's Top Priority," *China Daily*, July 14, 2006; "Number of corruption cases slightly up," *Xinhua*, December 29, 2010.)

Key Countries of Concern

Corruption Perception Index

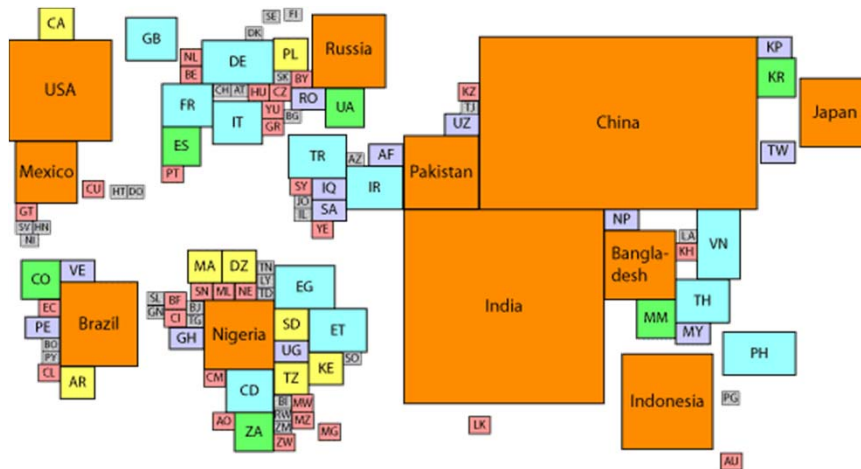
THE 2010 CORRUPTION PERCEPTIONS INDEX MEASURES THE PERCEIVED LEVELS OF PUBLIC-SECTOR CORRUPTION IN 178 COUNTRIES AROUND THE WORLD



www.transparency.org

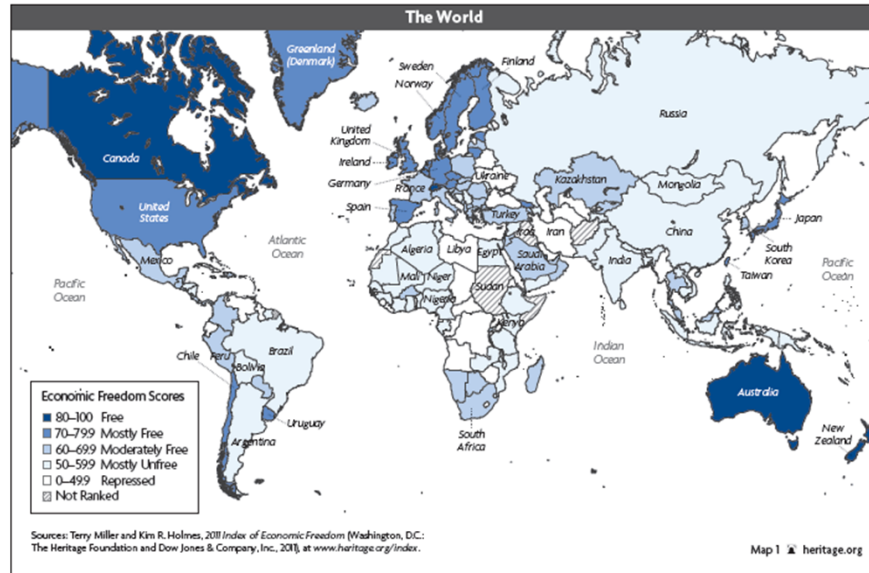
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Size of countries based on population



http://www.geohive.com/earth/gen_popsizes.aspx

The World



China



CPI Score – 3.5
Ranked 78 out of 178 countries

Key Issues

Environmental risk factors lend themselves more towards a culture of bribery, corruption, fraud and nepotism:

- Wages of government staff – bribes can supplement wages
- Decentralization of power
- Inconsistent enforcement of laws and IPR
- Immature legal remedies and dispute resolution mechanisms
- Scarcity of qualified and experienced middle management
- Greater distance from corporate headquarters
- Lack of corporate governance
- Prevailing culture of loyalty to family, friends and colleagues
- Culture of accepting 'gifts' / Less understanding of acceptable behaviors

Using middlemen as conduits for fraud & corruption does not insulate companies from prosecution

SEA



Key Issues

Environmental risk factors:

- Widespread use of illicit (facilitation) payments between corporates and the government
- Emerging markets - Unstable government bodies (i.e. Thailand)
- Immature legal remedies and dispute resolution mechanisms
- Scarcity of qualified and experienced middle management
- Lack of internal controls and corporate governance
- Excessive bureaucracy
- Inconsistent application of laws and regulations
- Non-transparent regulatory processes

RANK	COUNTRY / TERRITORY	CPI 2010 SCORE
1	Singapore	9.3
38	Brunei	5.5
56	Malaysia	4.4
78	Thailand	3.5
110	Indonesia	2.8
116	Vietnam	2.7
127	Timor-Leste	2.5
134	Philippines	2.4
154	Cambodia	2.1
154	Laos	2.1
176	Myanmar	1.4

Brand Protection & Internal Risks

Brand Protection

- Risks to brand and reputation in the business lifecycle are growing
- Development of a compliance program that covers all the key risks is vital
- Fraud can take many forms and is inextricably linked to corruption.
- Extended operations and supply chains increase the risk of fraud and corruption.
- The resulting damage to an organization's reputation and profit can be significant

Fraud risks are additionally heightened in Asia because of:

- Longer supply chains
- Difficult economic conditions
- Unfamiliar trade practices
- Language and cultural barriers
- Unfamiliar political, regulatory and environmental practices.

Three levels of Bribery:

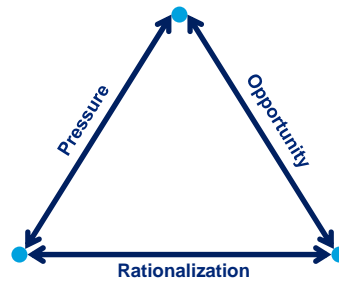
- Entertainment & Gifts
- Cash
- Hidden Interests

Overview of Risks to the Brand

Social Accountability	Workplace Environment	Reputation/Regulatory	Quality Assurance
<ul style="list-style-type: none"> • Compensation • Working hours • Forced labor • Child labor • Discrimination • Freedom of association & collective bargaining • Immigration • Industrial action 	<ul style="list-style-type: none"> • Health and safety • Security • Environmental protection 	<ul style="list-style-type: none"> • Bribes • Kickbacks • Fraud • Anticorruption (CFPOA, FCPA, UK Bribery Act) • AML/ETS (FINTRAC) • Shrink/theft • Intellectual property rights • Copyright infringements • Related parties transactions • Personal data protection • Confidentiality • ITAR • CTPAT 	<ul style="list-style-type: none"> • Outsourcing • Capacity • Inspections • Inclusion of illicit goods/materials
<p>These have the following impacts on:</p> <ul style="list-style-type: none"> • Reputation • Profit • Financial • Legal • Social • Political • Share Value 			

Why Employees Commit Fraud

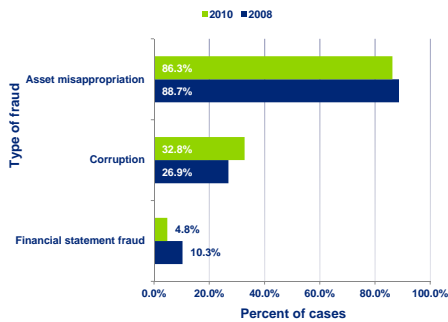
- Fraud typically appears when:
 - 1) There is pressure for an employee to commit fraud
 - 2) There is an opportunity that an employee can make use of
 - 3) The employee can rationalize the wrong doing.
- So when an employee is offered or asked to pay a bribe, they will usually ask themselves the following three questions:
 - 1) Is it more than my job is worth?
 - 2) Will I get caught?
 - 3) Is it right or wrong?



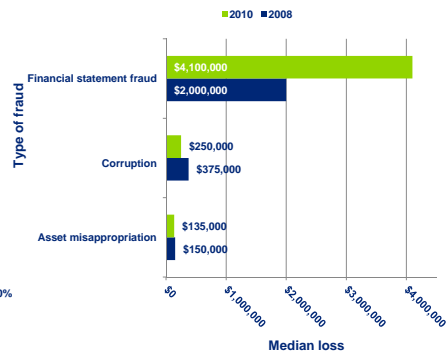
Main Categories of Fraud and Corruption Risk

- Main areas of risk
 - Integrity and reputation
 - Corruption
 - Fraudulent reporting
 - Misappropriation of assets

Occupational frauds by category – frequency*+



Occupational frauds by category – median loss*



* Obtained from ACFE's "Report to the Nations 2010"

+ The sum of percentages in this chart exceeds 100% because several cases involved schemes from more than one category

Procurement Integrity Risk Matrix

	PROCUREMENT	INVENTORY	PRODUCTION	DISTRIBUTION
Employee only	<ul style="list-style-type: none"> Phantom vendors False invoices Invoice mark-up / alteration Redirection of delivery Theft of intellectual property 	<ul style="list-style-type: none"> Theft of inventory Fraudulent or improper inventory capitalization Manipulation of inventory accounting / inventory counts / quantity (fictitious inventory) Falsified documents (shipping documents, sales orders, receiving report) 	<ul style="list-style-type: none"> Theft of intellectual property Inaccurate / falsified forecast of raw materials, spare parts or finished goods Theft of raw materials, finished goods or scrap Sales of backdoor goods Redirection of business to an undisclosed related party Personal use of inventory or assets False reporting (under declaring the emissions) for industry subject to environment regulations 	<ul style="list-style-type: none"> Theft of finished goods Mark up transport costs Falsified distribution records Grey market distribution
Employee & External Party	<ul style="list-style-type: none"> Bribery / kickbacks Conflict of interest Collusion in bidding Unnecessary / excess orders Duplicate ordering Duplicate payments Order splitting Exclusion of qualified vendors Theft of intellectual property Customs clearance (eg. "Facilitation payments") 	<ul style="list-style-type: none"> Bribes from subcontractor Invoices for goods not received Inventory write off (lost, obsolete, scrap) Corporate espionage Customs clearance (eg. "Facilitation payments") 	<ul style="list-style-type: none"> Kickbacks / bribes may lead to bias in selection of suppliers / vendors, inflate forecasts of raw materials or finished goods requirements or sabotage production (also known as industrial espionage) Theft of intellectual property Bribery of government employees Illegal trading of carbon credits Customs clearance (eg. "Facilitation payments") 	<ul style="list-style-type: none"> Collusion with transporters Channel stuffing Theft of intellectual property Theft of finished goods Sales of backdoor goods Collusion with distributor / reseller Grey market distribution
External Party i.e. Supplier / Distributor Competitor	<ul style="list-style-type: none"> Bribery of third party Improper government relationship False or misstated invoices Overstatement of business experience Suppliers misrepresenting their financial, technical or ethical position 	<ul style="list-style-type: none"> Bribery of subcontractors Inflated or fictitious invoices Short shipments or substitution of lower quality goods Invoices for goods not received 	<ul style="list-style-type: none"> Unqualified consultants Misrepresentation of technical capability and / or capacity by suppliers / vendors 	<ul style="list-style-type: none"> Distribution of counterfeit products by competitors Bribery of customers by competitors Theft of finished goods Reseller / distributor misrepresenting technical, financial or ethical position Sabotage of finished goods

Investigation Elements – Reactive



- Dealing with 3rd parties
- Dealing with Whistleblowers

Overall Best Practice

- Reputation Protection, Asset Recovery and Prevention
- Health Check
- After the event response plan
- Link Fraud and Corruption risk
- Successor Liability

Components of an Effective Compliance Program

- Establish the right culture
- Hire the right people
- Assess internal controls
- Actively monitor controls
- Develop a fraud response plan
- Know your suppliers
- Manage your subcontractors
- Monitor the process

Questions



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