

International Anti-Corruption Unit

“Work not only to do the right thing, but to be seen to do it. If people really believe your company will never pay a bribe, you’re far less likely to be asked for one”

Alexandra Wrage, Trace International

Lloyd Schoepp, RCMP Calgary Financial Integrity



Overview

- Corruption: The Global Problem
- What is Corruption
- CFPOA
- Investigations
- Voluntary Disclosure

Results of Corruption – Rana Plaza



Results of Corruption

HOSPITAL ADMISSION	IMP DETAILS		
	1. Morgue	59	* INCLUDING 3X HEAD 2X LEG 2X HAND <hr/> TOTAL 7 Parts CONSIDERED AS 7 X DEAD
	2. Buried	234	
	3. Handed Over	834	
	4. Odhor Chandra School	-	
		<hr/> 1127	

SAREED AHMED/CNN



What is Corruption?


- Behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.
- Includes
 - bribery,
 - extortion or
 - influence peddling.
 - embezzlement of funds,
 - theft of corporate or public property

Transparency International (TI)



Examples of Corruption

- Paying cash to a Public Official
- Using an AGENT to funnel bribes to the Public Official.
 - Treat Agent like an employee
- Hiring the Public Official's unqualified relative to get the contract.
- Paying for the Public Official not to do their job.
- Giving the Public Official extravagant gifts.
- Paying for the Public Official's holidays.
- **Red Flags – Joint Venture Agreements**

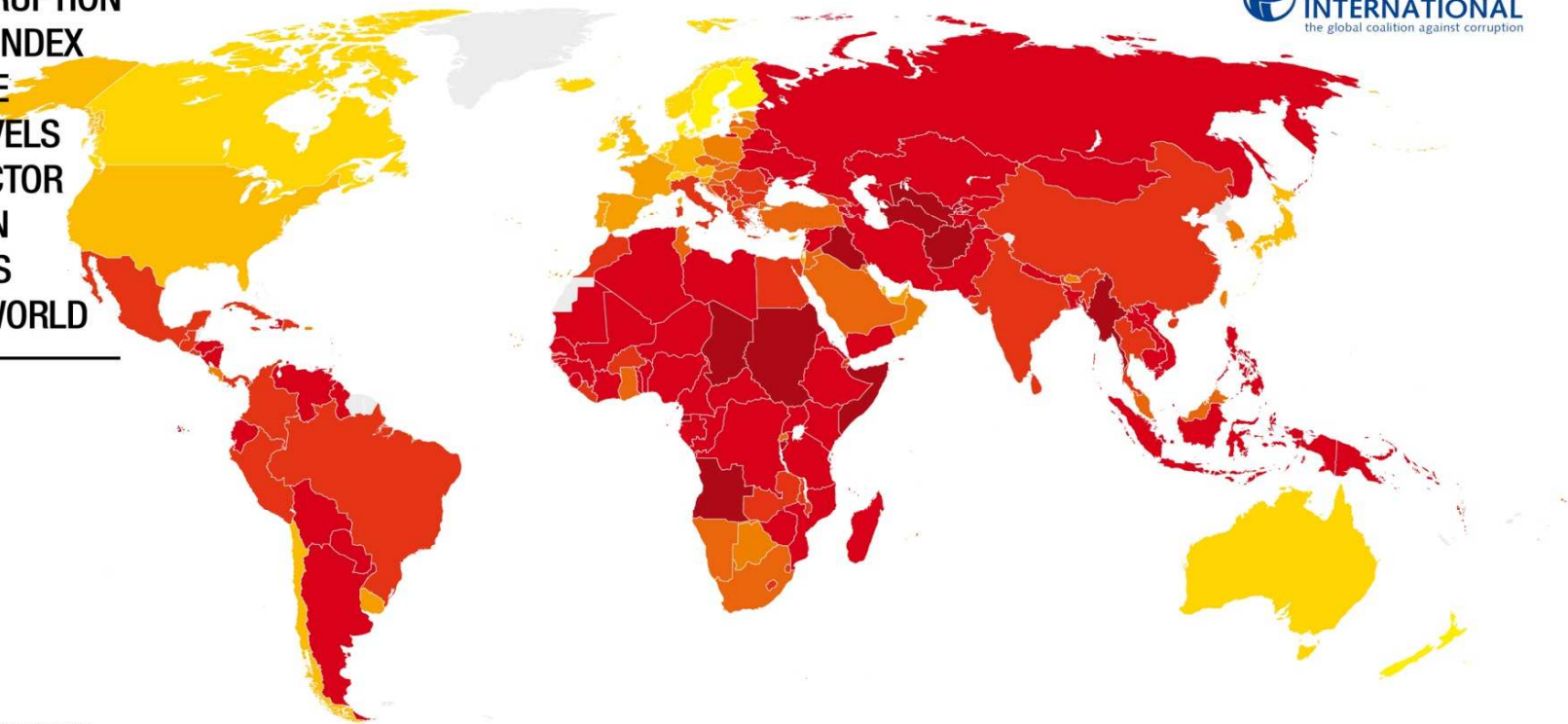
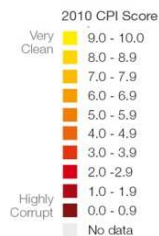


International Corruption the Problem...

- In some countries bribery has been accepted as a necessary part of doing business
- In other countries bribes were tax deductible business expenses – creating an uneven playing field for international businesses.
- In some countries, the entire bureaucratic apparatus is controlled by corrupt politicians, which allows officials to “rubber-stamp” bribes.

International Corruption the Problem...

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



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Oil & Gas and Corruption

Major Petroleum Basins

Perceived Corrupt Regions



Most of World's Oil and Gas Reserves are found in Countries with a high degree of perceived corruption



Corruption of Foreign Public Officials Act

- Offence of Bribing a Foreign Public Official
- Is a serious (indictable) offence
- No statute of limitations
- Punishments
 - Persons: Liable to imprisonment not exceeding five years.
 - Corporations: **Fines only, unlimited.**
- Jurisdiction
 - R v. Libman



Corruption of Foreign Public Officials Act

- Allows for facilitation payments
 - These are generally defined as:
 - Payments made to expedite or secure an act of a routine nature that is part of the foreign public officials duties or functions.
 - Should be small in monetary value, and infrequent.
 - Should be documented.



Corruption of Foreign Public Officials Act

- “As soon as you mark yourself as a company that’s willing to play along, the demands usually increase both in number and in value...Once you are in bed with these guys you lose control of the situation very quickly”

Alexandra Wrage – Trace International

- Seek Legal Advice



The



Act

- Fighting Foreign Corruption Act Assented 2013-06-19
- Key Provisions:
 - Establish nationality jurisdiction;
 - Books and Records provision (criminal);
 - Eventual elimination of facilitation payments;
 - “Business” redefined to eliminate need for profit;
 - Increase maximum jail term to 14 years (no CSO);



Section 22.2 C.C.

- Other Offences/Organizations
 - In respect of an offence that requires the prosecution to prove fault – an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers
 - A) acting within the scope of their authority, is a party to the offence;
 - B) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or
 - C) knowing that the representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.



Sources of Information

- Google/Open Source
- Competitors
- DFAIT
- Trade Journals
- International partners
- NGO's
- Informants/Whistleblowers
- Media

Due diligence is performed in order to verify the legitimacy of the source of information.



Investigational Techniques

- Search Warrants
- Special Investigative Techniques
- Production Orders
- Fintrac
- Publicly Available information
- Joint Investigations
- Mutual Legal Assistance/Treaty Requests
- Witness Statements



Related Offences

- Laundering/Possession of Proceeds of Crime
- Fraud
- Securities Offences
- Secret Commissions
- Foreign Jurisdictions



NIKO Investigation

- Assistance received from Bangladesh, Japan, Switzerland, Barbados, United States, United Kingdom
- 8 Mutual Legal Requests completed
- 16 Production Orders
- 20 people interviewed in 6 different countries



NIKO Investigation

- Assistance from international partners; FBI, City of London Police, World Bank, USDOJ, ACC Bangladesh, AFP
- Assistance from domestic partners; DFAIT, Passport Office, CBSA, FINTRAC



NIKO - Court

- June 24, 2011 – Niko pleads guilty to having bribed government officials in Bangladesh
- Section 3(1)(b) of the CFPOA
- The Bribe
 - Toyota Landcruiser valued at \$194,000
 - Trip to New York/Chicago
- Penalty
 - Fine \$8.2 Million + 15% Victim Surcharge = \$9.5 Million
 - 3 years' probation with extensive monitoring conditions



Voluntary Disclosure

- Same as any other crime in Canada
- Report offence to the RCMP who will investigate
- Cooperation will speed up the investigation
- Unreported bribery will also be looked at



Griffiths Energy

- First Voluntary Disclosure case litigated in Canada;
- 10x larger bribe than Niko to higher official;
 - Penalty: \$10.35 Million (no probation)
 - Crime may have been undetected BUT for voluntary disclosure
 - Impact of voluntary disclosure significant factor in justifying sentence including no need for probation;



R v. Karigar

- Convicted August 2013 under S. 3 of the CFPOA for agreeing to offer a bribe in order to secure a contract with Air India in relation to biometric passenger screening software.
- First trial of an individual and first proceeding in which legislation was interpreted.
- No evidence that the bribe was actually paid. Crown argued that payment or even an offer to an official is not required to establish a violation of the Act.
- Court agreed and held that an agreement to bribe a public official is a violation of CFPOA and that evidence of involvement, or even awareness of a public official is not required.



R v. Karigar

- Karigar argued that the court did not have jurisdiction over the offence on the basis that two of the principle conspirators were located in the U.S. and that a number of actions in further of the offence occurred in India.
- The Court rejected this interpretation holding that establishing a substantial connection to Canada, as required under *Libman* is not limited to the essential elements of the offence.
- The Court went on to say that the act of bribery cannot be separated from the legitimate aspects of a related transaction.
- In other words, the fact that the accused was employed by a Canadian company, acting on its behalf and attempting to obtain a contract that would bring economic benefit to Canada were all factors that resulted in a substantial connection to Canada sufficient to establish jurisdiction.
- A sentencing hearing is set for the end March.