



How Large Enterprises Manage Corruption Risk

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Agenda



- What is the Risk?
 - The Consequences
 - The Transgressions
 - The Solutions
- How do Companies Manage it?
- Corporate Trends
- How do Canadian Companies Stack Up?

Corruption Risk – The Consequences

- Legal Risk
- Reputation Risk
- Value Risk

Legal Risk

- More anti-corruption treaties & laws
- Increased number of investigations & prosecutions
 - Mostly in US
 - Slowly happening in Europe
- Expanding definition of improper payments
- Rising benchmark for compliance programs
- Foreign bribery cases are extremely complex
- Require large financial resources & special expertise
- Overall – Increased Risk

Legal Risk in Canada

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- Canadian law (CFPOA) enacted in December 1998
- Only one Canadian case prosecuted so far – Hydro Kleen
- All charges against individuals stayed
- Hydro Kleen fined \$25,000
- RCMP increasing resources to enforce *CFPOA*
- Double Jeopardy risk exists

Double Jeopardy

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Statoil Case

- Statoil agreed to pay US\$ 15.2 million in 2002 to Horton Investments Ltd, based in Turks & Caicos & owned by relative of NIOC Director, for business development in Iran
- Statoil paid US\$ 5.2 million prior to investigation by Norwegian authorities (OEkokrim)
- Statoil paid US\$ 3 million fine to Norwegian authorities in 2004
- Three senior executives of Statoil forced to resign: Chairman, CEO and EVP of International
- In October 2006 Statoil settled with SEC and US DoJ
- They agreed to pay total of US\$ 21 million: \$10.5 million fine (\$3 million fine paid to OEkokrim deducted) and disgorged \$10.5 million (total payment of US\$18 million to US authorities)
- Statoil also agreed to retain compliance monitor for three-year period
- Agreed to fully cooperate with US authorities in all matters relating to FCPA during three year period
- Case highlights risk of multiple prosecutions in different jurisdictions for allegations arising out of single set of facts

Corruption Risk – The Transgressions

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- The Obvious Bribe
- The Not So Obvious Bribe
 - Facilitation Payments
 - Gifts & Entertainment
 - Travel
 - Services
 - Employment
 - Contractors
 - Agents & Joint Ventures
 - Political Contributions
 - Charitable Contributions

Corruption Risk – The Solutions

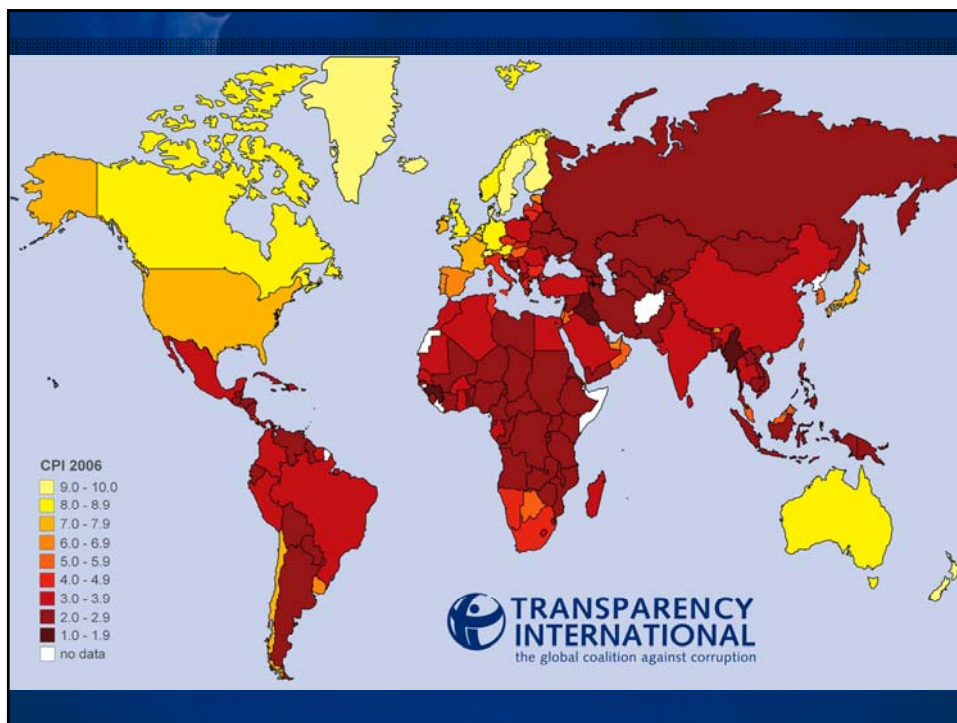
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- Corporate Culture - Tone is set at top
- Policy – clear, concise written guide
- Training – focused, comprehensive & regular
- Internal Controls – financial & personal
- High Risk Areas – identify & manage

High Risk Areas

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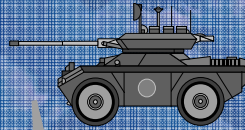
- Countries
- Industries
- Employees
- Third Parties - Agents & JV's
- Risky Transactions



High Risk Industries

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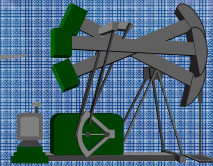
- Defence



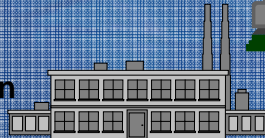
- Aviation



- Energy



- Construction



- Government Procurement



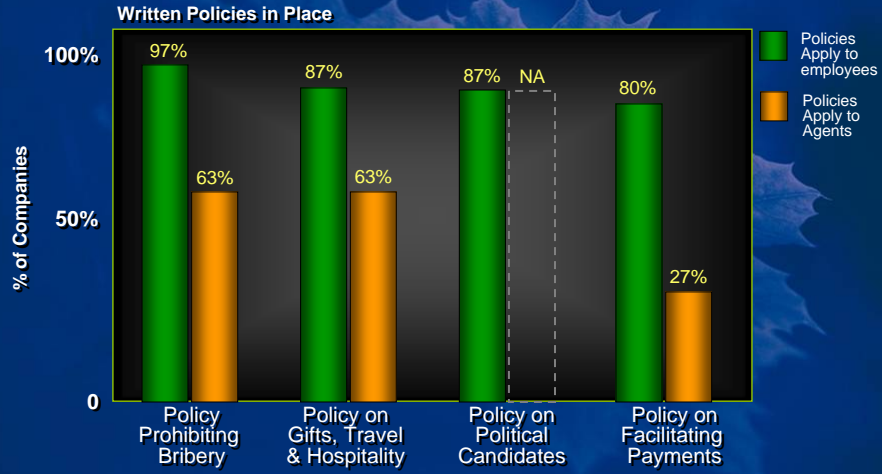
Managing Employee Risk

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- Identify positions most at risk
- Recruit carefully
- Educate high risk employees
- Support in country staff
- Open communication channels
- Require significant decisions out of country
- Discipline quickly and effectively

TRACE Survey of Company Policies

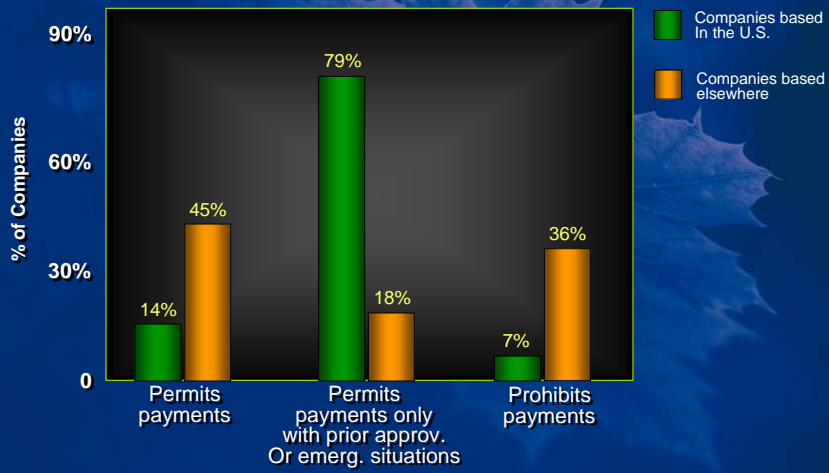
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Facilitating Payments Policies

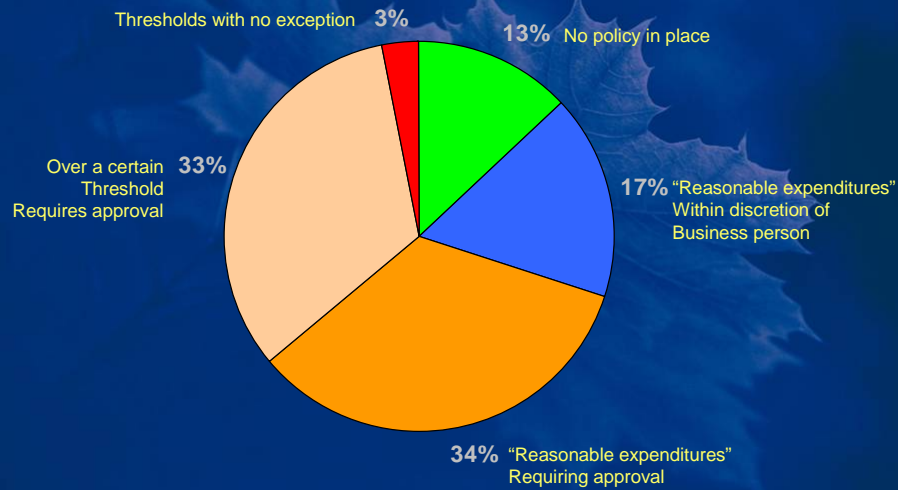
by home country
TRACE Survey

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Gifts, Travel and Hospitality Policies

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Managing Agent Risk

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Decision To Retain Agent

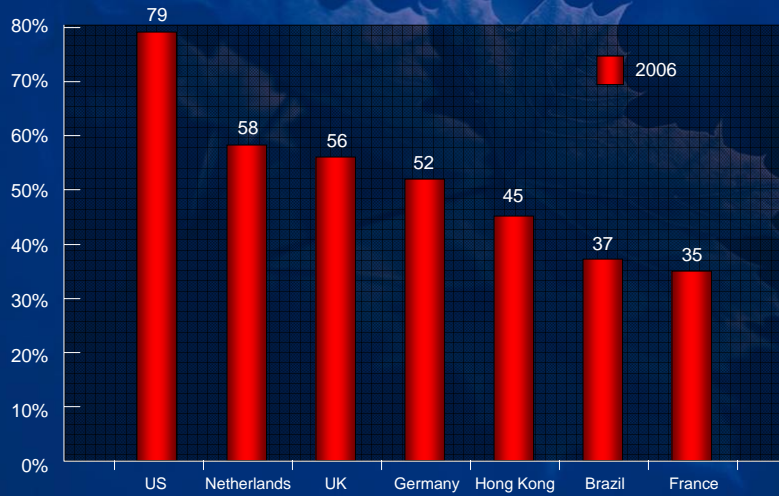
- Do you really need an agent?

Retaining An Agent

- Clearly establish business justification
- Research for best qualified agent
- Conduct independent due diligence
- Employee recommending agent provides certificate
- Contract must have anti-bribery clause
- Provide agent briefing on bribery policy
- Final review and decision in executive suite
- Document all of above

Companies (by originating country) with Due Diligence Process for Agents

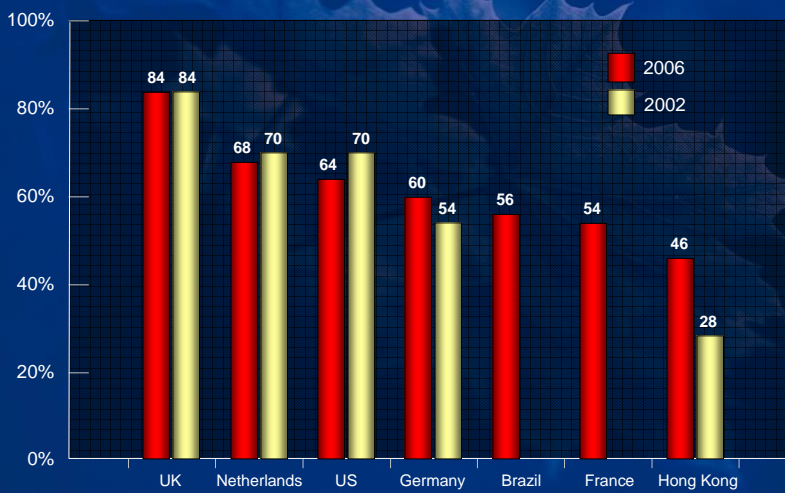
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Companies (by originating country) with Due Diligence Process for Joint Venturers

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Dilemma with Due Diligence

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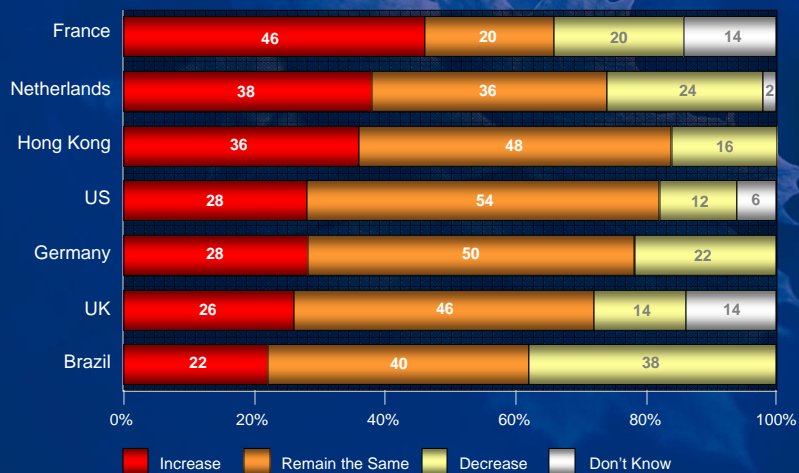
Companies regularly conduct due diligence on Agents & local Joint Venture Partners

How do you handle allegations of corruption from questionable sources?

- Dealing in opaque society
- Allegation is typically unprovable
- Agent or Joint Venture Partner will likely deny allegation
- Can partially address with structure of deal
- Uncertainty & ambiguity part of deal
- Need to assess risk tolerance

Expected Corruption Trends (by country)

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Perception of Compliance Standards (by country)



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THE END



THANK YOU

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Facts

- Hydro Kleen Systems Inc. used pig to cleaned coke from pipes in oil refineries
- It serviced US refineries in competition with Innovative Coke Expulsion. Both were based in Red Deer
- Hydro Kleen retained US immigration official Hector Ramirez Garcia at Calgary Airport to process work permits
- Hydro Kleen employees paid approximately CAN \$28,000 between September 2000 & November 2001 to Garcia
- Three parties charged under Section 3(1)(a) of CFPOA:
 - Hydro Kleen
 - Robert Watts (President & majority shareholder)
 - Paulette Bakke (Operations Coordinator)
- Garcia previously convicted under section 426 of Criminal Code, sentence to 6 months in jail & extradited to US

Hydro Kleen

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Trial Decision

- Oral decision given January 10, 2005 in Red Deer court
- Defence counsel plea bargained guilty verdict for corporation (but not employees) with Crown
- All charges against Watts & Bakke stayed
- Hydro Kleen pleaded guilty to contravening bribery section of CFPOA
- Court fined Hydro Kleen \$25,000
- Innovative Coke sued Hydro Kleen