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U.S. FOREIGN CORRUPT PRACTICES ACT (FCPA)

Watergate and Corporate “Slush” Funds

SEC Questionnaire

- 400 companies admitted questionable or illegal payments in excess of \$300 million to foreign government officials, politicians and political parties.
- 1977 with opposition from many U.S. Companies, FCPA Enacted.



FCPA

Provisions

- Unlawful for any individual, firm, office, director, employee or agent of a firm and any stockholder acting on behalf of a firm to bribe foreign government officials to obtain or retain businesses or to secure any improper advantage.
 - Prohibited conduct includes paying, offering, promising to pay or authorizing payment.
 - Includes officials of public international organizations as well as foreign political parties or party officials and candidates for office.



Provisions continued...

- Prohibits payment through intermediaries while knowing that all or portion of the payment will go directly or indirectly to a foreign official.
 - Knowing includes conscious disregard and deliberate ignorance.
 - Intermediaries include joint venture partners or agents.
 - Requires companies whose securities are listed in the U.S. to meet accounting provisions, i.e., make and keep books and records that accurately and fairly reflect the transactions of the corporation, and to devise and maintain an adequate systems of internal accounting controls.



Exceptions and Affirmative Defense

- Defendant is required to demonstrate.
- Payments to facilitate or expedite performance of a “routine governmental action:”
 - Obtaining permits, licenses.
 - Processing governmental papers such as visas and work orders.
 - Providing phone service, power and water supply.
 - Loading and unloading cargo or protecting perishable products.
 - Scheduling inspections.
- Payment is lawful under written laws of the foreign country.
- Money spent as part of demonstrating a product or performing contractual obligations.



Penalties

- **Criminal**
 - Corporations and business entities subject to a fine of up to \$2 million.
 - Officers, directors, stockholders, employees and agents subject to fines up to \$100,000 and imprisonment for 5 years.
 - Under alternate fines act, the above fines could be much higher -- twice the benefit that the defendant sought to obtain.
 - Individual fines may not be paid by employer or principal.



Penalties continued...

- **Civil**
 - DOJ or SEC may bring civil action for a fine up to \$10,000 against any firm, officer, director, employee or agent or stockholder.
 - SEC may also impose additional fines not to exceed the greater of the gross amount of pecuniary gain or a specific dollar limitation (based on seriousness of the violation -- up to \$100,000 for individual or up to \$500,000 for entity).
 - DOJ or SEC can enjoin any act or practice.



Penalties continued...

- **Other**
 - Person or firm found in violation of FCPA may be barred from doing business with the federal government.
 - Indictment can lead to suspension.
 - Person or firm found in violation of FCPA may be ruled ineligible to receive export licenses and may be suspended or barred from the securities business.



Penalties continued...

- **Commodities**
 - CFTC and Overseas Private Investment Corporation (OPIC) may suspend or debar.
 - May give rise to private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO).
- **Opinion Procedure**
 - Any U.S. company or national may request a statement of DOJ's enforcement intentions regarding proposed business conduct.



Jurisdiction

- Issuers and domestic concerns (an individual who is a citizen, national or resident of the U.S. or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization or sole proprietorship which has its principle place of business in the U.S. or is organized under the laws of a state of the U.S. or a territory, possession or commonwealth of the U.S.).
 - Issuers and domestic concerns may be held liable under either territorial or nationality jurisdictions principals.
 - Acts taken within the United States in furtherance of a corrupt payment using the U.S. mails or other instrumentalities of interstate commerce (telephone calls, facsimile transmissions, wire transfer and interstate or international travel).



Jurisdiction continued...

- Acts taken outside the United States in furtherance of a corrupt payment without any involvement by personnel within the U.S.
- Territorial jurisdiction over foreign companies and nationals (other than issuers which are covered) if they cause directly, or through agents an act in furtherance of the corrupt payment to take place within the territory of the U.S.
- A U.S. parent corporation can be held liable for the acts of foreign subsidiaries where they authorized, directed or controlled the activity in question.



Enforcement

- **Red Flag System:**
 - Third party payments and due diligence --
 - reputable and qualified partners and representatives,
 - personal or professional ties to government,
 - number and reputation of their clientele,
 - reputation with U.S. Embassy or Consulate,
 - reputation with local bankers, clients and other business associates.
 - Unusual payment patterns of financial arrangements.



Enforcement continued...

- History of corruption in the country.
- Refusal to provide certification.
- Unusually high commissions.
- Lack of transparency in expenses and accounting records.
- Lack of qualifications and resources to perform services offered.
- J.V. Partner or representative recommended by an official of potential governmental customer.



FCPA Case Examples

Ashland Oil

- April 1980, Ashland bought majority share (\$29 mil.) of a mining entity controlled by Omani government official.
- Real purpose was to obtain Omani crude oil at highly favorable price.
- Investment in mining company wrote off in 1992 and Ashland awarded crude oil contracts of 20,000 barrels a day at \$3.00 a barrel discount from fair market value.
- 1980 SEC civil injunction.



FCPA Case Examples continued...

Saybolt Inc.

- 1995 payment of \$50,000 to government officials in Panama in order to secure a valuable lease along the Panama Canal.
- Payment in cash, authorized by David Mead, former President and CEO of Saybolt.
- Mead sentenced to 3 months home detention, 3 years supervised probation and \$20,000 fine. Saybolt paid \$1.5 million fine and 5 years probation.



FCPA Case Examples continued...

Lockheed:

- Lockheed paid \$1 million to Dr. Leila I. Takla to influence her to assist Lockheed in obtaining a contract to sell three C-130-H30 Hercules aircraft to Egypt in 1989 (contract valued at \$79 million)
- Dr. Takla was, during this period of time, a member of the Peoples' Assembly of Egypt.
- Lockheed hired company set up by Dr. Takla and her husband, called Takla, Inc.



FCPA Case Examples continued...

Lockheed:

- Payment made by wire transfer to Dr. Takla's Swiss account in Zurich and characterized as "termination fee."
- Lockheed paid \$24.8 mil. in criminal and civil fines.
- Lockheed VP of Middle East and North Africa, Suleinga Nassar fled U.S. jurisdiction. He was arrested and extradited. Sentenced to 18 months in prison and ordered to pay \$125,000 fine.
- Another Lockheed executive was sentenced to probation and a \$20,000 fine.



FCPA Case Examples continued...

Triton Energy Corporation - In 1989 and 1990:

- Triton subsidiary, Triton Indonesia, Inc., made payments to Indonesian government officials through a business agent for favorable tax audits on oil and gas operations in Indonesia.
- SEC in 1997 settled charges, with Triton paying a \$300,000 penalty and being permanently enjoined from violating the books and records and internal control provision of 1934 SEC Act.



FCPA Case Examples continued...

Montedison, S.p.A.:

- 1996 SEC civil suit alleging that Montedison (non-U.S. issuer) committed financial fraud by concealing millions of dollars of payments to bribe politicians in Italy.

GE:

- July 1992 GE admitted conspiring with Israeli Air Force General Dotan to create bogus bills for fake Israeli Air Force projects.
- GE paid \$69 million in fines.
- GE employee sentenced to 7 years in prison.



FCPA Case Examples continued...

Baxter International, Inc.:

- Baxter paid middlemen and others in Europe and the Middle East to have its name removed from the Arab boycott list of companies doing business with Israel.
- Paid \$65 million in criminal and civil fines.



Recent Trend In FCPA Enforcement Cases Brought By The SEC

The SEC has shown an increased willingness to hold U.S. issuers of securities accountable for the alleged misdeeds of their foreign subsidiaries by using the broad reach of the FCPA's accounting provisions.

Although the FCPA antibribery provisions don't apply directly to a foreign subsidiary of a U.S. company, the accounting provisions require such companies to keep books, records, and accounts, which accurately and fairly reflect any transaction and disposition of assets in reasonable detail, and to maintain an adequate system of internal controls.



Recent Trend In FCPA Enforcement Cases Brought By The SEC continued ...

Failure to assure that its subsidiary is complying with the accounting provisions can lead to liability for the U.S. parent for its failure to ensure the accuracy of the subsidiary's books and records even if the parent company has no knowledge or reason to know of the inadequate recordkeeping.



Recent Trend In FCPA Enforcement Cases Brought By The SEC continued ...

Example

BellSouth Corporation:

- In 2002, BellSouth agreed to pay a civil penalty of \$150,000 and to accept entry of an administrative cease-and-desist order based on violations of the FCPA's accounting provisions in two of the company's Latin American subsidiaries.
- According to the SEC, BellSouth's Venezuelan subsidiary authorized payments totaling approximately \$10.8 million to six offshore companies.



Recent Trend In FCPA Enforcement Cases Brought By The SEC continued ...

Example

BellSouth Corporation continued... :

- Based on fictitious invoices, the subsidiary improperly recorded the payments as bone fide services in it books and records. The subsidiary's internal controls did not detect the unauthorized payments for two years, a clear sign of inadequacy as determined by the SEC.
- In a separate incident, BellSouth's Nicaraguan subsidiary allegedly made improper payments to the wife of a Nicaraguan legislator, who chaired a committee with oversight responsibility for the telecommunications industry.



Recent Trend In FCPA Enforcement Cases Brought By The SEC continued ...

Example

BellSouth Corporation continued... :

- The wife was hired as a consultant to work primarily on the repeal of a law restricting foreign ownership of Nicaraguan telecommunications companies.
- The SEC alleged that the payments to the wife were improperly recorded as consulting services when in actuality, they were bribes paid to the legislator. BellSouth's internal controls were also deemed inadequate because the company should have known that the in-house attorney that approved the wife's retention lacked sufficient FCPA training.



OECD ANTI-BRIBERY CONVENTION

Adopted November 21, 1997 by 30 OECD member states
and *5 other non-member nations:*

- *Argentina*
- *Brazil*
- *Bulgaria*
- *Chile*
- *the Slovak Republic*



OECD ANTI-BRIBERY CONVENTION

- **Criminalizes bribery of foreign public officials**
 - Officials of all branches of government (appointed or selected).
 - Any person exercising a public function for a foreign country including for a public agency or public enterprise.
 - Any official or agent of a public international organization.



OECD ANTI-BRIBERY CONVENTION

- **Countries must apply “effective, proportionate and decisive criminal penalties” to punish those who bribe foreign public officials.**
 - Countries without concept of corporate criminal liability must provide for equivalent non criminal sanctions, including monetary penalties.
 - Countries must be able to seize or confiscate the bribe and bribe proceeds (i.e., net profit) or property of similar value, or comparable monetary sanctions.
- **Prohibits the establishment of off-the-books accounts.**



OECD ANTI-BRIBERY CONVENTION

Bribery of foreign officials, a predicate offense for purposes of money laundering legislation

Country jurisdiction:

- Offenses committed in whole or part in their territories.
- Principles of nationality or territoriality recognized by their legal systems.
- Extensive physical connection to act of bribery not required.



OECD ANTI-BRIBERY CONVENTION

Participating governments agree to provide legal assistance relating to investigations and proceedings

Working Group and Monitoring process:

- Review of legislation
- Review of implementation



OECD ANTI-BRIBERY CONVENTION

Ratification and Acceptance

- *Argentina*
- *Australia*
- *Austria*
- *Belgium*
- *Brazil*
- *Bulgaria*
- *Canada*
- *Chile*
- *Czech Republic*
- *Denmark*
- *Finland*
- *France*
- *Germany*
- *Greece*
- *Hungary*
- *Iceland*



OECD ANTI-BRIBERY CONVENTION

Ratification and Acceptance (cont'd)

- Ireland
- Italy
- Japan
- Korea
- Luxembourg
- Mexico
- Netherlands
- New Zealand
- Norway
- Poland
- Portugal
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States



COUNCIL OF EUROPE

- Pan European organization with 43 Member States, 17 of which are Central and Eastern European countries.
- 188 international treaties and agreements, many dealing with international cooperation in legal matters (including extradition, mutual legal assistance, execution of judgements, etc.).



Criminal Law Convention on Corruption

- **November 1998 adopted the Criminal Law Convention on Corruption:**
 - As of February 2002 signed by 38 countries and ratified by 12.
 - Also open to U.S., Japan, Canada, Mexico, Belarus, Bosnia, Holy See, and Herzegovina.
- **Obligates signatories to criminalize, on the basis of a set of common elements, a large range of corruption offenses, including active and passive corruption of:**
 - national, foreign and international public officials,



Criminal Law Convention on Corruption (cont'd)

- members of national, international and supranational parliaments or assemblies,
- judges and staff of domestic, international or supranational courts,
- active and passive private corruption (restricted to business or commercial activity),
 - prohibits bribing any person who directs or works for, in any capacity, private sector entities (includes partners, directors, consultants, commercial agents, etc.).



Criminal Law Convention on Corruption (cont'd)

- active and passive trading in influence involving national and public officials,
 - where a person having real or supposed influence on officials, judges or members of parliament trades this influence in exchange for undue advantage from someone seeking this influence. Must include a corrupt intent
 - laundering of corruption proceeds.
 - corruption in auditing.



Criminal Law Convention on Corruption (cont'd)

- Conventions differentiate between the behavior of the bribed person in the public vs. private sector. It is immaterial in the case of the public official whether the official acted or intended to act in breach of his duties. In private sector breach of duty is an essential element.
- Requires criminal sanctions and non-criminal administrative, civil sanctions provided they are "effective, proportionate and dissuasive."



Civil Law Convention on Corruption (cont'd)

- **Adopted on 8 September 1999 and open for signature in November 1999.**
 - Deals with civil remedies for damage resulting from acts of corruption. Also, validity and effect of contracts, transparency and protection of whistle blowers, evidence, state liability, contributory negligence, accounts and audits, etc.
 - Enables persons who have suffered damage as a result of a corrupt act to obtain damages, obligates each country to provide in the domestic law for the right to bring civil action. Damages must be determined according to loss sustained in the particular case. Requires loss from actual damages, as well as non-pecuniary loss, i.e., reputation.



Civil Law Convention on Corruption (cont'd)

- Any party whose ability to enter into a contract has been undermined by an act of corruption shall have the right to apply to court for the contract to be declared void.
- **Both conventions will be monitored by the “Group of States Against Corruption” (GRECO). GRECO will:**
 - Improve the capacity of Member States to fight corruption by mutual evaluation and peer pressure.
 - Ensure compliance with guiding principles in the fight against corruption and implementation of the convention and other legal instruments to be adopted.



EUROPEAN UNION

Convention on the Fight Against Corruption:

- Pertains to officials of the European Communities or officials of Member States of the European Union.
- Has not yet been ratified by the 15 Members of the Union.
- Requires Member States to criminalize:
 - deliberate act of an official directly or through an intermediary, to request or receive advantages for himself or third party,
 - deliberate act of person who promises or gives, directly or through an intermediary, an advantage to an official.



EUROPEAN UNION

Convention on the Fight Against Corruption (cont'd)

- Requires criminal penalties, which are effective, proportionate and dissuasive.
- Heads of businesses or any persons having power to make decisions or exercise control within a business can be declared criminally liable.
- Jurisdiction is territorial and national and the offense is committed against a Community Member (nation, employee and/or official).
- Allows for extradition and cooperation.
- Disputes are to be referred to the Court of Justice of the European Communities.



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Adopted March 29, 1996 by 26 Member States of the Organization of American States (OAS):

- Promotes and strengthens mechanisms to prevent, detect, punish and eradicate corruption.
- Promotes, facilitates and regulates cooperation to ensure effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions.

General Provisions:

- Prohibits solicitation or acceptance, directly or indirectly by a government official or a person who performs public functions of any article of monetary value or other benefit (gift, favor or advantage).
- Prohibits the offering or granting of above.



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

General Provisions (cont'd):

- Prohibits any act or omission in the discharge of duties by a government official for the purpose of obtaining benefits for himself or a third party.
- Prohibits the fraudulent use or concealment of property derived from the above acts.
- Prohibits, by anyone, the collaboration or conspiracy to engage in above acts.
- Gives option by mutual agreement between two or more Member Signatories to include other acts of corruption.



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Specific Provisions:

- Each Member State must enact laws prohibiting bribery by its nationals to a government official or another Member State,
- Each Member State, within the fundamental principles of its legal system, shall establish under its law as an offense, a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Specific Provisions (cont'd):

- Asks each Member State to consider establishing offenses for the following acts by government officials:
 - improper use of classified or confidential information,
 - improper use of State property,
 - improperly seeking to obtain a decision from a public authority for benefit or gain,
 - the diversion of State assets including properties, money or securities.



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Jurisdiction and Cooperation:

- Each of the above offenses shall be deemed an extraditable offense (the Convention will serve as the legal basis for extradition if no forced extradition treaty exists).
- Each Member State shall afford one another the widest measure of mutual assistance by processing requests to obtain evidence and facilitate legal proceedings.
- Each Member State shall provide each other with the widest measure of technical support on the most effective way to prevent, detect, investigate and punish acts of corruption.



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Jurisdiction and Cooperation (cont'd):

- Each State Party shall provide assistance in the identification, tracing freezing and seizure and forfeiture of property, or proceeds derived from or used in the commission of listed offenses.
- Each State Party shall not invoke bank secrecy as a basis for refusal of assistance.
- There is no exception for corrupt acts intended for political purposes (cannot qualify as a political offense or a common offense).



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

- Argentina
- Bahamas
- Barbados
- Belize
- Bolivia
- Brazil*
- Canada
- Chile
- Columbia
- Costa Rica
- Dominican Republic
- Ecuador
- El Salvador
- Grenada
- Guatemala
- Guyana
- Haiti*

*not yet ratified



INTER-AMERICAN CONVENTION AGAINST CORRUPTION

- Honduras
- Jamaica
- Mexico
- Nicaragua
- Panama
- Paraguay
- Peru
- Suriname*
- Trinidad & Tobago
- United States
- Uruguay
- Venezuela

*not yet ratified



Para 1.15 of the Procurement Guidelines:

Fraud & Corruption

- Borrowers (including beneficiaries of Bank loans), as well as bidders/ suppliers/ contractors under bank-financed contracts, observe the highest standard of ethics during procurement and execution of such contracts.
- Prohibits offering, giving, receiving or soliciting anything of value to influence the action of a public official in the procurement process or in contract execution.
- Prohibits a misrepresentation of facts in order to influence a procurement process or the execution of a contract (includes collusive practices amongst bidders).



WORLD BANK

Penalties:

- Rejection of a proposal if bidder has been found to engage in corrupt or fraudulent practices.
- Cancellation of the portion of the loan if at any time the Bank determines that corrupt or fraudulent practices were engaged in.
- Will declare a firm ineligible, either indefinitely or for a stated period of time to be awarded a bank-financed contract.



WORLD BANK

Other:

- Can require inspection and audit of contractor/supplier accounts and records.
- Allows borrowers to introduce, as part of the bidding documents or the letter of invitation, an undertaking by bidders against fraud and corruption (integrity pact).

Action:

- As of July 2001 the Bank has declared 58 firms ineligible to be awarded bank-financed contracts, all but 5 of them permanently. 14 individuals have also been declared ineligible, all but 1 permanently.



WORLD BANK

Firms/Individuals Debarred:

- Pradeep S. Nair
- Crown Sakura, Ltd.
- Chase Berkeley Cavendish, Ltd.
- Amani B.P., Ltd..
- Canadex Technologies, Inc.
- President Peirre Savignac
- All Nippon Engineering Corp.
- Penmacs Corporation
- Nikko Research Center, Ltd.
- Nikko Research Center of America
- International Access Corp. (USA)
- Case Technology, Ltd..
- Nepostel Consultancy B.V.
- Labh Singh Gill
- Vikram Deepak Gursahaney
- Gurpreet Singh Malik



WORLD BANK

Debarred...

- Agricultural Development Services Ltd. U.K.
- Ana Exports Ltd., U.K
- Coldline Incorporated, U.S.A.
- Consultants for International Development P.L.C., U.K.
- Cord Construction Ltd., U.K.
- Cybertek International Ltd., U.K.
- Drill Technologies & Co., U.K.
- Pradeep Menon
- Economic Consulting Group, U.K.
- Emkay Enterprises Ltd., U.K.
- Engineering Projects International, U.K.
- First Fuji Ltd., U.K.
- Flair Developments Ltd., U.K.
- Infotek & Co., U.K.
- Inter Emirates & Co., United Arab Emirates



WORLD BANK

Debarred...

- International Development Projects Services, U.K.
- Inter-Russ Ltd., U.K.
- Labh Universal, U.K.
- Medirite Group Ltd. U.K.
- Mirna International, U.K.
- Norsk-Agro Ltd., U.K.
- Resource Development Ltd., U.K.
- Ribalco International, U.K.
- Sharda Impex (U.K.) Ltd., Nigeria
- Shereena Agriculture Ltd., Nigeria
- Shivind Ltd., U.K.
- Thrust Technologies & Co., U.K.
- Times International & Co., U.K.
- United Basel Ltd., U.K.
- West End Associates Ltd., U.K.
- Shivshanker Pre Nair



WORLD BANK

Debarred...

- Mandeep S. Sandhu
- Kamal Sharda
- Agric-Canada
- Karitex Limited
- Overseas Project Services Ltd.
- Rashid Nigmatullin
- Pavel Zolotaryov, USA
- Daresley Holding, Inc. British Virgin Islands
- Harlton Investments, Inc. USA
- Asia Construction, USA
- Tomen Corporation, Japan
- Eastern Trading, Ltd. United Arab Emirates
- Gap International, India
- Scan Distributions Pte., Ltd., Singapore
- Surendra Singh, India
- Swaan Consulting AB, Sweden
- Nordic Trust Stiftelsen I, Sweden



WORLD BANK

Debarred...

- Swedcon KB a/k/a Swedish Urban Planner & Management, Sweden
- O-Group BV a/k/a O-Group Management & Consulting Urban Planner BV, Netherlands
- Productionsekonomi I Stockholm AB, Sweden
- Databas & Natverksideer, Sweden
- Sadin International Operations Ltd., Sweden
- Sadin International Operations Ltd., Sweden
- Claes Fjellner, Sweden
- Jonas Gyllensvaan, USA
- Dactus AB, Sweden



WORLD BANK

The debarment or suspension of firms applies as well to any firm which owns the majority of the capital of that company and to any firm of which the company owns a majority of the capital.



OTHER INITIATIVES AGAINST CORRUPTION

United Nations:

- 1996 Declaration Against Corruption and Bribery in International Commercial Transactions. Calls for criminalizing foreign bribery and elimination of tax deductibility of bribes.
- 1998 passed additional resolution urging Member State to criminalize bribery of public office holders and to engage in programmatic activities to deter, prevent and combat bribery and corruption.



OTHER INITIATIVES AGAINST CORRUPTION

United Nations:

- From January 21st through February 1st 2002 the United Nations Considered a draft of the United Nations Convention against Corruption
- There were two options for the statement of the convention's purposes:
- Option 1
 - (a) To promote and strengthen measures to prevent and combat more effectively corruption and criminal acts related specifically to corruption;
 - (b) To promote, facilitate and support cooperation among States Parties in the fight against corruption [and to assist States Parties in building systems that foster integrity.



OTHER INITIATIVES AGAINST CORRUPTION

United Nations:

- Option 2

The purpose of this Convention is to promote international cooperation to deter, detect, combat and punish corruption. It also seeks to promote and strengthen the development of mechanisms necessary to ensure the effectiveness of measures and actions to punish acts of corruption in the exercise of public functions and acts associated with the exercise of such functions, as well as corruption among individuals.



OTHER INITIATIVES AGAINST CORRUPTION

United Nations:

- Although the convention is still in its draft stage, it is likely to include criminal law measures as well as measures to promote good governance and an effective means of monitoring implementation
- Criminal law measures could cover offenses to address domestic bribery and the bribery of foreign public officials in international business transactions; possession and laundering of the proceeds would also likely be criminalized
- Measures to promote good governance would likely include auditing procedures applicable to public administration and the public sector, access-to-information legislation, and accountability in corporate governance.



OTHER INITIATIVES AGAINST CORRUPTION

The International Monetary Fund (IMF):

- Adopted policy to deny financial assistance to countries where bribery and corruption threaten to undermine economic recovery programs.

The World Trade Organization (WTO):

- Established Working Group of Transparency in Government Procurement.



OTHER INITIATIVES AGAINST CORRUPTION

European Bank for Reconstruction and Development (EBRD):

- Policies including integrity of bank staff; integrity of bank in making operation related decisions; integrity of bank clients, project sponsors and suppliers; and integrity of the investment environment in the Ebara's countries operations.



OTHER INITIATIVES AGAINST CORRUPTION

Asian Development Bank (ADB):

- **July 1998, adopted an Anti-Corruption Policy which --**
 - supports competitive markets and transparent public administration,
 - supports promising anti-corruption efforts,
 - ensures ADB projects and staff adhere to the highest ethical standards.



OTHER INITIATIVES AGAINST CORRUPTION

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“**USA PATRIOT Act**”)

- Signed into Law October 26, 2001 by President Bush.
- Section 312 (**Special Due Diligence For Correspondent Accounts and Private Banking**) of Title III (**International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001**) requires any domestic financial institution with private banking or correspondent accounts in the U.S. for a non-U.S. person to establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through these accounts. - This provision is essentially a “know your customer” -type requirement.



OTHER INITIATIVES AGAINST CORRUPTION

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“**USA PATRIOT Act**”) **Section 312**

- Minimum due diligence procedures and controls on private banking accounts obligate a financial institution to take reasonable steps to identify the nominal and beneficial owners, and source of funds deposited to, the account.
- Enhanced scrutiny is required on any private banking account maintained by a senior foreign political figure, their immediate family members or close associates to detect and report transactions that may involve the proceeds of foreign corruption.
- Another provision of the PATRIOT Act makes the laundering of the proceeds of foreign corruption a covered money laundering criminal offense.



CORPORATE CODES OF CONDUCT AND COMPLIANCE

U.S. companies have, for many years used corporate codes of conduct and compliance programs to achieve compliance with legal and ethical rules and to reduce liability.

- The **U.S. Sentencing Commission's Guidelines** for the sentencing of organizations emphasize the existence of an effective compliance program in determining the fines and other penalties to be imposed on a company for its crimes.
- These sentencing guidelines are intended to create incentives for companies to adopt effective programs for preventing, detecting and reporting crimes:
 - must be reasonably designed, implemented and enforced,



CORPORATE CODES OF CONDUCT AND COMPLIANCE

Sentencing guidelines (cont'd)

- principle attribute is that it fosters due diligence by the company,
- can substantially reduce fine,
- if not in place at time of sentencing, company will be placed under court-supervised probation and be required to develop a program under court supervision,
- must set up similar programs for subsidiaries (controlled or with substantial minority ownership).



CORPORATE CODES OF CONDUCT AND COMPLIANCE

Elements of a Compliance Program

- **Commitment of senior management:**
 - statement of senior management's commitment to the program,
 - policy compliance should be reflected in employee and manager performance assessments and compensation reviews,
 - senior managers should be assigned "ownership" of the policy,
 - a compliance committee should be established to supervise policy implementation and to oversee disciplinary actions.



CORPORATE CODES OF CONDUCT AND COMPLIANCE

Elements of a Compliance Program (cont'd)

- **Key Issues:**

- prohibition of bribery,
- gifts and entertainment,
- travel and lodging expense,
- political contributions,
- facilitating payments,
- internal controls and record keeping,
- relationship with third party representatives,
- distribution and acknowledgement,
- training and education,
- audit and evaluation,
- investigations and remedial action.



OECD PRINCIPLES OF CORPORATE GOVERNANCE

Principles are designed to assist Member and non-Member governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations and other parties that have a role in the process of developing good corporate governance.



OECD PRINCIPLES OF CORPORATE GOVERNANCE

- ***The rights of shareholders:***
 - secure methods of ownership registration,
 - convey or transfer of shares,
 - obtain relevant information on the corporation on a timely and regular basis,
 - participate and vote in general shareholder meetings,
 - elect members to the board,
 - share in the profits of the corporation,
 - have the right to participate in, and be sufficiently informed on decisions concerning fundamental corporate changes, i.e., amendments to statutes or articles of incorporation; authorization of additional shares; extraordinary transactions.



OECD PRINCIPLES OF CORPORATE GOVERNANCE

- ***Equitable treatment of shareholders:***
 - within any class -- same voting rights,
 - insider trading and abusive self-dealing should be prohibited.

- ***The role of the shareholders:***
 - assure that the rights of shareholders that are protected by law, are protected,
 - shareholders should have effective redress for violation of their rights,
 - access to relevant information,
 - performance-enhancing mechanisms for shareholder participation, i.e., employee representation on Board; employee stock ownership.



OECD PRINCIPLES OF CORPORATE GOVERNANCE

- ***Disclosure and transparency:***
 - financial and operating results,
 - company objectives,
 - major share ownership and voting rights,
 - Board and key executive pay,
 - foreseeable risk factors,
 - material issues regarding employees and other shareholders,
 - governance structures and policies,
 - audits in compliance with recognized standards of accounting (including annual independent audit).



OECD PRINCIPLES OF CORPORATE GOVERNANCE

- ***Board responsibilities:***
 - members should act on a fully informed basis, in good faith, with due diligence and care and in the best interests of the company and shareholders,
 - treat all shareholders fairly,
 - ensure compliance with applicable laws,
 - review and guide corporate strategy, major plans of action, annual budgets and business plans,
 - select, compensate monitor and replace key executives,
 - review executive and Board remuneration,
 - monitoring and managing potential conflicts of interest,
 - ensuring integrity of corporation's accounting and reporting systems,
 - monitoring the effectiveness of the governance practices,
 - overseeing the process of disclosure and communications.



METHODOLOGY OF THE BPI

The following **Bribe Payers Index (BPI)** table reflects the answers by the respondents to the Gallup International (GAI) poll of the following exact question:

“In the business sectors with which you are familiar, please indicate whether companies from the following countries (list of 19 leading exporting countries) are very likely, quite likely or unlikely to pay bribes to win or retain business in this country.”

The respondents included senior executives at major companies, chartered accountancies, bi-national chambers of commerce, major commercial banks and law firms.



1999 Transparency International BPI Ranking 19 Leading Exporters

Rank	Country	Score
1	Sweden	8.3
2	Australia	8.1
3	Canada	8.1
4	Austria	7.8
5	Switzerland	7.7
6	Netherlands	7.4



1999 Transparency International BPI Ranking 19 Leading Exporters

Rank	Country	Score
7	United Kingdom	7.2
8	Belgium	6.8
9	Germany	6.2
9	United States	6.2
11	Singapore	5.7
12	Spain	5.3
13	France	5.2



1999 Transparency International BPI Ranking 19 Leading Exporters

Rank	Country	Score
14	Japan	5.1
15	Malaysia	3.9
16	Italy	3.7
17	Taiwan	3.5
18	South Korea	3.4
19	China (Including Hong Kong)	3.1



1999 Transparency International BPI Ranking 19 Leading Exporters

The new survey, conducted in 14 emerging market countries, involved detailed questions to more than 770 senior executives at major companies, chartered accountancies, chambers of commerce, major commercial banks and law firms.

These respondents did include foreign nationals and executives at international firms. The questions concerned the propensity to bribe senior public officials by corporations.



1999 Transparency International BPI Ranking 19 Leading Exporters

The BPI poll respondents were in the following emerging market countries that between them account for more than 60 percent of total imports of all emerging market economies:

Asia/Pacific

India
Indonesia
Philippines
South Korea
Thailand

Latin America

Argentina
Brazil
Columbia

Europe

Hungary
Poland
Russia

Africa

Morocco
Nigeria
South Africa



METHODOLOGY OF THE CPI

In an area as complex and controversial as corruption, no single source or polling method has yet been developed that combines a perfect sampling frame, large enough country coverage, and a fully convincing methodology to produce comparative assessments. This is why the CPI has adopted the approach of a composite index. It consists of credible surveys using different sampling frames and various methodologies and is the most statistically robust means of measuring perceptions of corruption.

The goal of the CPI is to provide data on extensive perceptions of corruption within countries. This is a means of enhancing understanding of levels of corruption from one country to another.



METHODOLOGY OF THE CPI

3 Examples of sources used:

- the World Economic Forum (WEF),
- the International Crime Victim Survey (ICVS),
- the Institute for Management Development, Lausanne (IMD).

Sample questions asked by various agencies...

- The WEF asks: **"Irregular, additional payments connected with import and export permits, business licenses, exchange controls, tax assessments, police protection or loan application are common/ not common."**
- The ICVS asks: **"In some areas there is a problem of corruption among government or public officials. During 1995, has any government official, for instance a customs officer, police officer or inspector in your own country, asked you or expected you to pay a bribe for his service?"**
- The IMD asks respondents to assess whether: **"Improper Practices (such as bribing and corruption) prevail or do not prevail in the public sphere."**



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2001 CPI Score	Standard Deviation	Surveys Used
1	Finland	9.9	0.6	7
2	Denmark	9.5	0.8	7
3	New Zealand	9.4	0.6	7
4	Iceland	9.2	1.1	6
4	Singapore	9.2	0.5	12
6	Sweden	9.0	0.5	8



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
7	Canada	8.9	0.5	8
8	Netherlands	8.8	0.3	7
9	Luxembourg	8.7	0.5	6
10	Norway	8.6	0.8	7
11	Australia	8.5	0.9	9
12	Switzerland	8.4	0.5	7
13	United Kingdom	8.3	0.5	9



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
14	Hong Kong	7.9	0.5	11
15	Austria	7.8	0.5	7
16	Israel	7.6	0.3	8
16	USA	7.6	0.7	11
18	Chile	7.5	0.6	9
18	Ireland	7.5	0.3	7
20	Germany	7.4	0.8	8



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
21	Japan	7.1	0.9	11
22	Spain	7.0	0.7	8
23	France	6.7	0.8	8
24	Belgium	6.6	0.7	7
25	Portugal	6.3	0.8	8
26	Botswana	6.0	0.5	3
27	Taiwan	5.9	1.0	11



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
28	Estonia	5.6	0.3	5
29	Italy	5.5	1.0	9
30	Namibia	5.4	1.4	3
31	Hungary	5.3	0.8	10
31	Trinidad & Tobago	5.3	0.8	3
31	Tunisia	5.3	1.3	3
34	Slovenia	5.2	1.0	7



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
35	Uruguay	5.1	0.7	4
36	Malaysia	5.0	0.7	11
37	Jordan	4.9	0.8	4
38	Lithuania	4.8	1.5	5
38	South Africa	4.8	0.7	10
40	Costa Rica	4.5	0.7	5
40	Mauritius	4.5	0.7	5



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
42	Greece	4.2	0.6	8
42	South Korea	4.2	0.7	11
44	Peru	4.1	1.1	6
44	Poland	4.1	0.9	10
46	Brazil	4.0	0.3	9
47	Bulgaria	3.9	0.6	6
47	Croatia	3.9	0.6	3



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
49	Czech Republic	3.9	0.9	10
50	Colombia	3.8	0.6	9
51	Mexico	3.7	0.6	9
51	Panama	3.7	0.4	3
51	Slovak Republic	3.7	0.9	7
54	Egypt	3.6	1.5	7
54	El Salvador	3.6	0.9	5
54	Turkey	3.6	0.8	9



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
57	Argentina	3.5	0.6	9
57	China	3.5	0.4	10
59	Ghana	3.4	0.5	3
59	Latvia	3.4	1.2	3
61	Malawi	3.2	1.0	3
61	Thailand	3.2	0.9	12
63	Dominican Republic	3.1	0.9	3
63	Moldova	3.1	0.9	3



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
65	Guatemala	2.9	0.9	4
65	Philippines	2.9	0.9	11
65	Senegal	2.9	0.8	3
65	Zimbabwe	2.9	1.1	6
69	Romania	2.8	0.5	5
69	Venezuela	2.8	0.4	9
71	Honduras	2.7	1.1	3



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
71	India	2.7	0.5	12
71	Kazakhstan	2.7	1.3	3
71	Uzbekistan	2.7	1.1	3
75	Vietnam	2.6	0.7	7
75	Zambia	2.6	0.5	3
77	Cote d'Ivoire	2.4	1.0	3
77	Nicaragua	2.4	0.8	3



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
79	Ecuador	2.3	0.3	6
79	Pakistan	2.3	1.7	3
79	Russia	2.3	1.2	10
82	Tanzania	2.2	0.6	3
83	Ukraine	2.1	1.1	6
84	Azerbaijan	2.0	0.2	3
84	Bolivia	2.0	0.6	5
84	Cameroon	2.0	0.8	3



THE 2001 TRANSPARENCY INTERNATIONAL CPI

Country Rank	Country	2000 CPI Score	Standard Deviation	Surveys Used
84	Kenya	2.0	0.7	4
88	Indonesia	1.9	0.8	12
88	Uganda	1.9	0.6	3
90	Nigeria	1.0	0.9	4
91	Bangladesh	0.4	2.9	3



THE 2001 TRANSPARENCY INTERNATIONAL CPI

2001 CPI Score

- relates to perceptions of the degree of corruption as seen by business people, risk analysts and the general public and ranges between 10 (highly clean) and 0 (highly corrupt).

Surveys Used

- refers to the number of surveys that assessed a country's performance. 14 surveys were used and at least 3 surveys were required for a country to be included into the 2000 CPI.

Standard Deviation

- indicated differences in the values of the sources: the greater the standard deviation, the greater the differences of perceptions of a country among the sources.



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