



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/000

Document List

Submitted by: APEC Secretariat



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

Document List

Document No.	Title	Submitted By
2014/SOM3/ACT/WKSP/000	Document List - High-Level Anti-Corruption Workshop on Combating Business Bribery 2014	APEC Secretariat
2014/SOM3/ACT/WKSP/001	Agenda - High-Level Anti-Corruption Workshop on Combating Business Bribery 2014	ACT Chair
2014/SOM3/ACT/WKSP/002	Progress and International Standards in Combating Foreign Bribery	OECD
2014/SOM3/ACT/WKSP/003	Combating Business Bribery - China in Action	China
2014/SOM3/ACT/WKSP/004	Latest Progress and International Standards in Combating Foreign Bribery	United States
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2014/SOM3/ACT/WKSP/011	Enforcement of Foreign Bribery and Other Corruption Offences Against Corporations	Singapore
2014/SOM3/ACT/WKSP/012	Dilemmas and Possible Solutions in Combating Transnational/Cross-border Business Bribery Committed by Business Entities	Chinese Academy of Social Sciences
2014/SOM3/ACT/WKSP/013	Enforcement of Bribery Offences Against Corporations	University of Bristol
2014/SOM3/ACT/WKSP/014	Enforcement of Foreign Bribery and Other Corruption Offences Against Corporations	Peru



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/001

Draft Agenda

Submitted by: ACT Chair



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

DRAFT AGENDA

High-Level APEC Anti-Corruption Workshop on Combating Business Bribery
(Co-chaired by Ministry of Supervision of China and
OECD Working Group on Bribery in International Business Transactions)

Thursday, 14th August 2014
Beijing Hotel, Beijing, China

01 – Registration (8:30 - 9:00 am)

02 - Opening Remarks (09:00 - 09:30 am)

Moderator: Mr. Yao Zengke, Vice Minister of Supervision of China

- Mr. Huang Shuxian, Minister of Supervision, and Director of National Bureau of Corruption Prevention, China
- Mr. Rintaro Tamaki, Deputy Secretary-General and Acting Chief Economist, OECD

03 - Group Photo (09:30 - 09:40 am)

Coffee Break (09:40 - 10:00 am)

04 - Latest Progress and International Standards in Combating Foreign Bribery (10:00 - 11:10 am)

This panel will introduce the latest progress and international standards in combating foreign bribery, including effective legislation, common investigation procedures, protection of whistleblowers, etc. OECD experts will present the latest work of OECD Working Group on Bribery.

Moderator: Mr. Patrick Moulette, Head of Anti-Corruption Division, OECD

- Mr. Deng Zhaofeng, Deputy Director General, Bureau of Economic Crimes Investigation, Ministry of Public Security, China
 - Mr. William Loo, Senior Legal Analyst / Manager Asia-Pacific Outreach, Anti-Corruption Division. OECD
 - Mr. Timur Eyvazov, Minister Counsellor, Embassy of the Russian Federation in France, Russia
 - Ms. Erin McCartney, Senior Counsel, Securities and Exchange Commission, USA
- (10:50 - 11:10 am: Question and answer session)*

Coffee Break (11:10 - 11:30 am)

05 - Enforcement of Foreign Bribery among APEC Economies and International Cooperation (11:30 am - 12:50 pm)

This panel will involve a discussion on effective measures and challenges relating to enforcement of the foreign bribery offence in APEC economies. Recent examples of successful cooperation in investigating and prosecuting transnational business bribery will also be introduced, including investigation of cases under the FCPA.

Moderator: Mr. Kieran Butler, Director of G20 Anti-Corruption Taskforce, Attorney-General's Department (under Australia's 2014 G20 Presidency), Australia

- Commander Bruce Hill, Australian Federal Police
- Professor Pakdee Pothisiri, Commissioner, National Anti-Corruption Commission (NACC), Thailand
- Ms. Nicola Mrazek, Senior Litigation Counsel, Department of Justice, USA:
- Mr. Tran Duc Luong, Vice Minister, Deputy Inspector General, Government Inspectorate, Vietnam

(12:30 - 12:50 pm: Question and answer session)

Lunch (Buffet, 12:50 - 14:00 pm)

06 - Prevention of Business Bribery and Success in Enterprises (14:00 - 15:00 pm)

This panel will focus on effective strategies in combating corruption and bribery within enterprises, including internal compliance systems, corruption hotlines, reporting mechanisms, whistleblower protection, etc.

Moderator: Mr. Yu Ning, Guest Inspector of Ministry of Supervision of China and Chairman of Grandall Law Firm, China

- Mr. He Renchun, Chief Economist, China Minmetals Corporation, China
- Mr. Cesar Rodriguez, President and Managing Director, Janssen-Cilag
- Ms. Aili Zhao, Vice President and Regional Compliance Officer China, Siemens Ltd

(14:45 - 15:00 pm: Question and answer session)

Coffee Break (15:00 - 15:20 pm)

07 - Enforcement of Foreign Bribery and Other Corruption Offences against Corporations (15:20 - 16:30 pm)

This panel will provide a brief overview of corporate criminal liability in APEC economies, especially in the context of foreign bribery and other corruption offences. The panelists will discuss challenges faced by law enforcement officials in enforcing criminal liability against corporations.

Moderator: Ms. Rebecca Rolls, General Manager, Financial Markets and Corporate Fraud, Serious Fraud Office, New Zealand

- Professor Shen Enwei, National Academy of Economic Strategy, Chinese Academy of Social Sciences, China
- Mr. Eric Tong, Assistant Director, Independent Commission Against Corruption, Hong Kong
- Ms. Susana Silva, General Coordinator of High Level Anti-Corruption Commission, Presidency of the Council of Ministers, Peru
- Professor Celia Wells, University of Bristol, United Kingdom
- Mr. Teng Khee Fatt, Deputy Director (Investigations), Corruption Practices Investigation Bureau, Singapore

(16:10 - 16:30 pm: Question and answer session)

08 - Closing remarks (16:30-17:00 pm)

Draft August 8

Moderator: Mr. Gu Yueren, Deputy Director General, Department of International Cooperation, Ministry of Supervision of China

- **Mr. Rintaro Tamaki, Deputy Secretary-General and Acting Chief Economist of the OECD**
- **Mr. Fu Kui, Vice Minister of National Bureau of Corruption Prevention of China**

(Note: Participants will meet outside the meeting room at 5:10 pm and go to the dinner venue by shuttle bus.)

09 - Welcome Reception (18:00 - 19:30 pm)

- **Hosted by Mr. Huang Shuxian, Minister of Supervision, and Director of National Bureau of Corruption Prevention, China**



**Asia-Pacific
Economic Cooperation**


2014/SOM3/ACT/WKSP/002

**Progress and International Standards in Combating
Foreign Bribery Title**

Submitted by: OECD

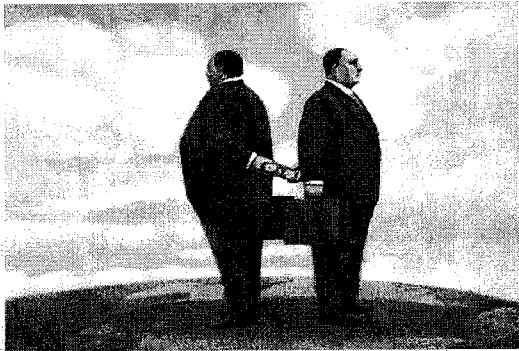


**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
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BETTER POLICIES FOR BETTER LIVES

Progress and International Standards in Combating Foreign Bribery



William Loo
Anti-Corruption Division
OECD

APEC ACTWG Workshop
Beijing 14 August 2014

Overview

- Anti-Bribery Convention and Monitoring
- Developments since 2009:
 - Facilitation Payments
 - Corporate Liability
 - Enforcement

OECD Anti-Bribery Convention

- Adopted in 1997 / In force in 1999
- Foreign bribery focus
- 41 Parties
 - Emerging & Non-OECD economies: Argentina, Brazil, Bulgaria, Chile, Colombia, Israel, Russia, South Africa, Turkey, Latvia
 - G20: 15 out of 19 (20th is the EU)
- 2009 Anti-Bribery Recommendation



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Article 12: Monitoring

- “a programme of systematic follow-up to monitor and promote the full implementation of this Convention”
- “in the framework of the OECD Working Group on Bribery in International Business Transactions”
- Country evaluations
- Phase 3 evaluation round: 2010-2015



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Facilitation Payments

- Facilitation payments are:
 - Small payments
 - Inducement to perform duty
 - Routine governmental action (e.g. permits)
- Convention: Foreign bribery is an offence
- BUT offence may exclude facilitation payment



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Facilitation Payments: Developments

Trend towards limiting exception:

- Canada: repealed in 2013
- Korea: bill to repeal in 2014
- Australia: consultation in 2012
- Denmark: prosecutor guidelines 2014



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Corporate Liability

Article 2 and 2009 Recommendation

- Corporate liability for foreign bribery
- System of liability must:
 - Reflect company's decision-making system;
 - Impose liability when highest management:
 - Commits, directs or authorises foreign bribery
 - Fails to prevent foreign bribery



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Corporate Liability: Developments

- **New laws (7):** Chile (2009); Luxembourg (2010); Spain (2010); Colombia (2011); Russia (2011); Czech Republic (2012); Brazil (2014)
- **Improved laws (4):** Turkey (2009); UK (2010); Hungary (2013); Latvia (2014)
- **Bills (4):** Mexico (2011); Bulgaria (2014); New Zealand (2014); Slovak Republic (2013)



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Compliance Defence

- Lower level employee commits foreign bribery
- Company had taken reasonable preventive steps
- Full defence, e.g. UK (Bribery Act s. 7), Chile, Korea, Italy
- Sentence mitigation or prosecutorial discretion, e.g. Brazil, Canada, Colombia, US



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Enforcement

Article 5 and Commentary 27

- Allegations must be “seriously investigated”
- Sufficient resources for investigations and prosecutions



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Enforcement Results

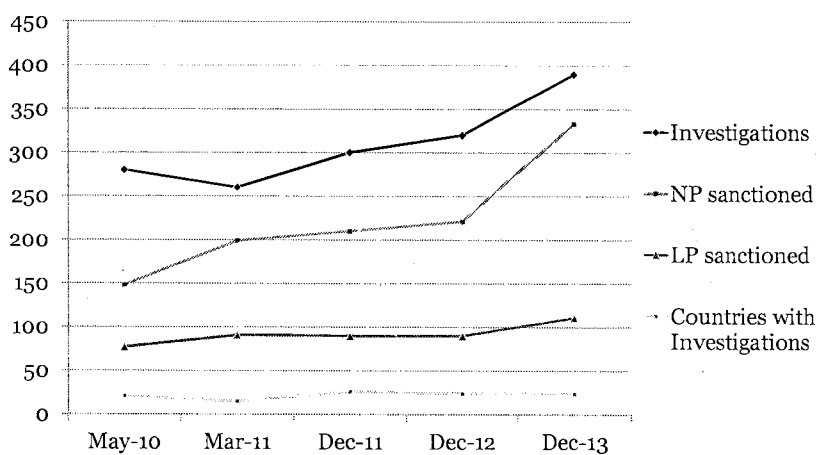
1999 to 2013

- 333 individuals and 111 entities criminally sanctioned in 17 Parties
- At least 87 prison sentences
- One case: EUR 1.24 billion in financial penalties
- 390 investigations in 24 Parties



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Enforcement Trends



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Conclusions

- Recent improvements
- Effect of monitoring process
- Still room for improvement – Phase 4



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Thank You & Discussions

- More information: www.oecd.org/corruption
- E-mail: William.Loo@oecd.org



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High-Level APEC Anti-Corruption Workshop

Mr. William Loo, OECD

Speaker in panel 1 on latest progress and international standards in combating foreign bribery

Outline of presentation

- Introduction:
 - The Working Group on Bribery uses a peer evaluation process to strengthen the anti-bribery frameworks of the member countries
 - The presentation will cover three overarching trends from the third phase of peer reviews: corporate liability, enforcement and facilitation payments
- Corporate liability
 - Recent adoption of corporate liability by some member countries
 - UK Bribery Act and “compliance defences” for corporate criminal liability
 - Note common weaknesses in corporate liability regimes identified by the Working Group on Bribery
- Enforcement
 - Levels of detection and prosecution as indicated by OECD data
 - Common recommendations made by the Working Group on Bribery during Phase 3 to encourage enhanced enforcement
- Facilitation payments
 - Few members of the Working Group on Bribery maintain an explicit defence for “facilitation payments”
 - Anti-Bribery Convention does not consider small facilitation payments to be bribes for the purposes of Article 1, but in 2009 the Council called on parties to review policies periodically and encourage companies to prohibit facilitation payments
 - Recent developments, including Canada’s decision to repeal its facilitation payments defence and Australia’s recent review of its defence.



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/003

Combating Business Bribery - China in Action

Submitted by: China



**High-Level Anti-Corruption Workshop on
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亚太经合组织“治理商业贿赂”高层研讨会

打击商业贿赂犯罪
——中国公安机关在行动
Combating Business Bribery
——China in action

公安部经济犯罪侦查局
ECID, MPS of China
2014-8-14



中华人民共和国公安部经济犯罪侦查局
Economic Crime Investigation Department
Ministry of Public Security, P.R. China

摘要 Content

- 执法体系 Enforcement system
- 执法策略 Strategy
 - 打击重点领域犯罪 Vigorous Enforcement
 - 专业化打击策略 Tactic
 - 形成部门合力 Cooperation
 - 提升公共意识 Public Awareness
- 合作前瞻 Looking Ahead



公安部经济犯罪侦查局 ECID, MPS of China



二、执法策略 Enforcement Strategy

中央政府：治理商业贿赂是维护公平竞争，健全现代市场体系的需要。

公安机关：投入更多关注与资源打击犯罪，采取更加多元和有效的措施打击犯罪。

实践验证：犯罪成本的增加将扭转格局

- An important field for China's anti-corruption campaign
- Maintain market economy order and create a fair market environment for competition
- Crime Cannot Survive if the Cost Exceeds the Income.

公安部经侦局 ECD MPS PRC

强力打击总体战略 Vigorous Enforcement

2012年以来，破案近万起，涉案金额达23亿元人民币。

Since 2012, China has dealt with about ten thousands cases of commercial bribery involving 2.3 billion yuan (US\$0.37 billion)



(一) 打击重点领域犯罪 Top Priority Targets

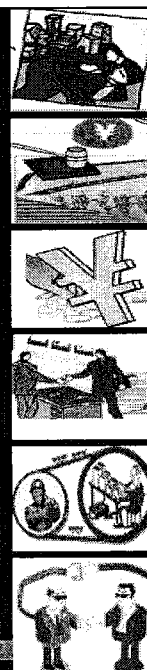
- 传统领域：工程建设、土地出让、产权交易、医疗卫生等

Traditional domains: engineering construction, land transaction, equity transaction, health service

- 新兴经济领域：广告、物流、电子商务、金融债券等

New domains: advertisement, logistics, Electronic Business, financial bonds

- 成为行业“潜规则”
“Hidden Rules”



公安部经侦局 31101 MTS 0810

全球化背景下跨国商业贿赂犯罪趋于活跃

2013年，公安部统一指挥，湖南、上海、河南等地公安机关对葛兰素史克公司涉嫌商业贿赂犯罪进行立案侦查。目前，该案已移送检察机关审查起诉。

In 2013, under the command of Ministry of public security, Police in different cities like Hunan, Shanghai and Henan commenced investigations against executives and staff members of GSK(China) Investment Co. Ltd. for suspected business bribery crimes. The investigation has been completed and the case handed over to prosecutors.



公安部经侦局 ECID MPS PRC

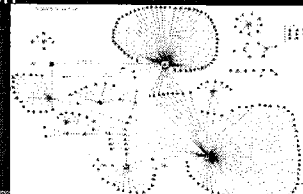
(二) 专业化打击策略 Professional Tactic

Concealment, diversity, complexity

- 行贿人、受贿人双方单线联系
bribers and bribees communicate exclusively
- 由金钱财物交易向财产性利益、非物质利益领域转化

From money transaction to property interests, non-material interests field

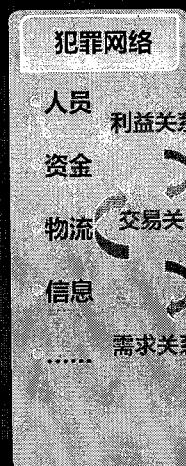
- “窝案”、“串案”多
most of the bribers and bribees in business bribery are recidivists; quite often they bear multiple case involvements.



公安部经侦局 ECID MPS PRC

■ 多元化打击战术 Multi-Methodology

- 加强线索搜集：举报奖励、情报搜集
Intelligence gathering
- 加强案件深挖：寻根溯源、精确打击
Deeper investigation
- 加强集中打击：大兵团作战、摧链断网
Integrated forces



公安部情报局 2010 MPS P.R.C.

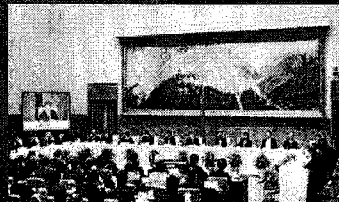
2012年，公安部下发15批重大犯罪线索，指挥20个省市公安机关开展集中收网行动，一举破案600余起。

In 2012, Ministry of Public Security passed important business bribery cases intelligence down to local public security agencies in 15 orders, instructed 20 local public security bureaus to synchronize the cracking. As a result we achieved successful investigations of more than 600 cases and effectively shattered the network of business bribery.



公安部情报局 2010 MPS P.R.C.

(三) 形成部门合力



各司其职、分工协作

加强协作配合，形成整体合力

We placed great emphasis on cooperating with other agencies, actively strive to form an integrated regulating force that unites resources of multiple governmental agencies to compress the space for business bribery to the minimum.



公安部预防腐败中心 预防腐败局

(四) 提升公众意识

Public Awareness Building

开展教育宣传，营造良好氛围

RAISING PUBLIC AWARENESS.



三、合作前瞻 Looking Forward

积极参与国际合作，共同打击商业贿赂犯罪

The international commercial bribery problem needs concurrent actions.

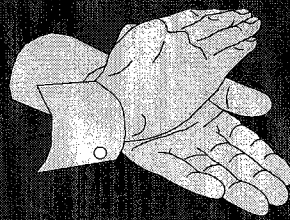
Participate in international cooperation

Pushing forward joint-operations

- ▣ Intelligence exchange
- ▣ Information sharing
- ▣ International & regional meetings
- ▣ Training, seminars



公安部經濟犯罪中心 ICIO MPS P.R.C



中華人民共和國公安部經濟犯罪偵查局
Economic Crime Investigation Department
Ministry of Public Security P.R.C China



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/004

**Latest Progress and International Standards in
Combating Foreign Bribery**

Submitted by: United States



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
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HIGH LEVEL APEC ANTI-CORRUPTION WORKSHOP

Panel 1: Latest Progress and International Standards in Combating Foreign Bribery

The U.S. Securities and Exchange Commission as a matter of policy disclaims responsibility for any private publication or statement by any of its employees. The views expressed in this discussion are my views and are not necessarily shared by the Commission, the Commissioners, or SEC staff.

This presentation will discuss enhanced enforcement of foreign bribery laws by WGB members, increased WGB focus on mutual legal assistance, and international cooperation in foreign bribery investigations.

Enhanced enforcement by WGB members:

- WGB has several mechanisms that allow the group to monitor enforcement levels by Parties to the through a variety of different ways: the Phase 3 reports (in the future Phase 4), Phase 3 follow-up reports, and Tour de Table.
- Phase 3 reports have in-depth information involving investigations, prosecutions, and out of court settlements. This allows the Working Group to access whether Parties to the Convention are enforcing their foreign bribery laws, but also whether sanctions are effective, proportionate and dissuasive, as required by Article 3 of the Convention.
- The Phase 3 follow-up reports also review the efforts by Parties to bring foreign bribery cases, including detection of foreign bribery allegations and resources to investigate foreign bribery cases.
- Recent trends that I have noticed among Working Group members are: 1) an increase in the number of active foreign bribery investigations; 2) the number of cases being brought by Parties; and 3) countries using out of court settlement options to pursue foreign bribery cases against legal persons.

Increased Focus on Mutual Legal Assistance

- The Anti-Bribery Convention contains an Article on Mutual Legal Assistance requiring each Party, to the fullest extent possible under its laws and relevant treaties and arrangements to provide prompt and effective assistance to another Party for purposes of criminal investigations and proceedings concerning Convention offenses and non-criminal proceedings concerning Convention offenses brought against a legal person.
- That means the ABC may be another avenue to request MLA between Parties to the Convention for foreign bribery investigations and prosecutions, as well as for foreign bribery-related accounting offenses (Art. 8) or money laundering (Art. 7).
- The Working Group has begun to focus on mutual legal assistance statistics and areas for improvement in timely MLA responses.
- WGB also published a Typology on Mutual Legal Assistance in Foreign Bribery Cases in 2012 that sets forth common MLA challenges in foreign bribery cases and potential solutions. The typology also discusses coordination of investigative efforts and provides case examples.

International Cooperation in Foreign Bribery Investigations

- The WGB, through Phase 3 reports, oral and written follow-up reports, has seen increased efforts of Parties to the Convention to cooperate and coordinate in investigations that may span different jurisdictions.
- Many delegations to WGB Plenary include prosecutors, investigators, or law enforcement officials acting as experts for the WG or lead examiners.
- Another great tool to promote discussion and cooperation is the bi-annual Informal Meeting of Law Enforcement Officials.
- ABC WGB membership currently has 41 Parties and covers nearly 80 percent of world exports.





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/005

**Enforcement of Foreign Bribery Among APEC
Economies and International Cooperation**

Submitted by: United States



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**



Enforcement of Foreign Bribery among APEC Economies and International Cooperation

1

Disclaimer

Nicola J. Mrazek
Senior Litigation Counsel
Foreign Corrupt Practices
Act Unit
Criminal Division, Fraud
Section
U.S. Department of Justice

The comments below are my own and in no way bind the U.S. Department of Justice.

2

The U.S. Foreign Corrupt Practices Act (FCPA)

Antibribery provisions:

- Prohibit payment, offer of payment, or authorization of payment of bribes, directly or indirectly, to foreign officials, foreign parties, foreign party officials, and foreign candidates for public office

Accounting provisions:

- Books and Records: make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and
- Internal Controls: devise and maintain a system of internal accounting controls

3

Jurisdiction for FCPA Bribery Cases

Any company incorporated or headquartered in the United States

Any person who is a U.S. citizen or resident

Any company that is an "issuer" on a U.S. stock market, which includes certain foreign companies with American Depository Receipts

Any person or company who acts in furtherance of the violation while in the United States

Anyone who aids and abets or conspires with any of the above

4

Successful FCPA Prosecutions Continue

- 55 corporate criminal settlements
- More than \$3 billion USD in penalties and forfeiture.
- 47 convictions of individuals (in FCPA or related charges), including high level executives like CEOs and CFOs
 - Including 40 guilty pleas
 - Including 7 trial convictions

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Recent Examples of Cases Involving APEC Economies

Ralph Lauren Corporation (April 22, 2013)

- \$882,000 criminal penalty
- Included bribes in Argentina

Diebold, Inc. (October 22, 2013)

- \$25,200,000 criminal penalty
- Included bribes in China and Indonesia

Marubeni Corporation (March 19, 2014)

- \$88,000,000 fine
- Included bribes in Indonesia

HP Mexico and HP Russia (April 9, 2014)

- \$58,800,000 fine plus \$2,527,750 forfeiture
- Included bribes in Mexico

6

Requests for Mutual Legal Assistance

In the last year and a half, the FCPA unit has made more than 58 requests for mutual legal assistance, including to:

Belgium	Guernsey	Liechtenstein	South Africa
Brazil	Guinea	Luxembourg	Spain
BVI	Hong Kong	Macao	Sweden
China	India	Mexico	Switzerland
Colombia	Indonesia	Netherlands	Tunisia
Curacao	Ireland	Norway	United Kingdom
Cyprus	Israel	Panama	Uruguay
Denmark	Japan	Philippines	
France	Jordan	Russia	
Germany	Latvia	Sierra Leone	

7

Current Issues in Mutual Legal Assistance

Data Privacy and State Secret Laws

Often comes up in the context of internal investigations

Companies want to cooperate

Scope of laws is sometimes unclear

Figuring out ways to allow companies to cooperate is mutually beneficial

8

Current Issues in Mutual Legal Assistance

Need for Relationship Building

Cooperation is often more difficult than it might first seem

Open dialog with a trusted partner is key

Road blocks can be overcome if both partners are motivated

ACT-NET can be one step forward

9

Current Issues in Mutual Legal Assistance

More Parallel Prosecutions

moving passed simple mutual legal assistance

Too often, MLA requests are simply processed by a central authority that is overworked and under resourced

By their very nature, international bribery cases involve facts that should be actively investigated by more than one jurisdiction

International requests for evidence in international bribery cases should initiate a parallel prosecution

10

Examples of Excellent Cooperation in Parallel Investigations

Case	United States	Foreign Economy
Haiti Teleco	Prosecution of two executives, three middle men, and three government officials. Restitution order for Haiti	Haiti- Expelled two former Haitian officials to stand trial in the United States. Provided significant MLA to the U.S.
Pacific Consolidated Industries	Prosecution of two executives. Provided significant MLA to the U.K.	U.K.- Prosecuted the government official. Provided significant MLA the U.S.
CFE	Prosecution of three executives and two middle men (some acquitted) Seizure of brokerage account Provided significant MLA to Mexico	Mexico- Prosecution of the government official. Seizure (pursuant to U.S. MLA request) of a yacht purchased with bribe money Provided significant MLA to the U.S.

11

Examples of Issues in MLA Overcome by Parallel Prosecutions

- What allows evidence to be admitted into court in various jurisdictions is often difficult to understand but very important
- Example, U.S. authentication certificate originally transmitted post Haitian earthquake using iPhone picture because of strong interpersonal relationship made clear the importance of receiving the document for an upcoming trial

12

Examples of Issues in MLA Overcome by Parallel Prosecutions

- Understanding what will become known to the defendant (or the public) at what times is key for good cooperation
- Example, prosecutors might agree to not share particularly sensitive information (like the name of a cooperator) because if that information was shared it would have to be disclosed.
- Open communication is important so there are no misunderstanding and expectations are managed.

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Questions?

www.justice.gov/criminal/iraud/fcpa

14



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/006

Viet Nam's Experiences In Combating Foreign Bribery

Submitted by: Viet Nam



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

VIETNAM' S EXPERIENCES IN COMBATING FOREIGN BRIBERY

by H.E. Mr. Tran Duc Luong, Dep.
Inspector General of Vietnam.
APEC Workshop on "Combating
Transnational Business Bribery,
Promoting Robust Economic
Development"
14/08/2014, Beijing, China

I. Vietnam legal provisions on bribery

- Vietnam has no specific regulations on foreign bribery.
- Acts of offering or receiving foreign bribes shall be tried under the general regulations on offering bribes (Article 279, Penal Code) and receiving bribes (Article 289, Penal Code).

I. Vietnam legal provisions on bribery

- Article 5 & 6 of the Penal Code

II. International cooperation in foreign bribery

1. The legal basis

- Penal Code, Penal Procedure Code, Law on MLA and international treaties which Vietnam has signed or acceded to.
- Vietnam has signed:
 - + 17 Agreements on MLA on criminal matters
 - + 8 Agreements on extradition with 8 countries
 - + 8 Agreements on Transfer of sentenced persons
 - + ASEAN MLA Agreement.
- Principle of reciprocity: In case of no agreement.

II. International cooperation in foreign bribery

2. Example of success in international cooperation in combating foreign bribery

- **Cooperation between Vietnam and Japan: The case of Pacific Consultants International (PCI) offering bribes to Vietnamese public official**

PCI CASE (CONT)

- **PCI is a Japan-based company: the East - West Highway and Ho Chi Minh City Water Environment Improvement Projects**
- **Japanese and Vietnamese news reports**
- **Japan Investigation Agency requested Vietnamese authorities to cooperate**
- **Ministry of Public Security of Vietnam (MPS) conducted an investigation.**
- **On December 8, 2008, MPS issued a decision on prosecuting the bribery offering and receiving case**

PCI CASE (CONT)

- Vietnamese authority requested Ministry of Justice of Japan (MoJJ) to provide documents relating the case of bribery receiving by Huynh Ngoc Sy.
- Ministry of Justice of Japan later sent more than 3,000 pages of documents to Vietnam to support the investigation.
- In March 2009, a Japanese court rendered Masayoshi Taga (former president of PCI, one of four former prosecuted officials) to suspended sentence of 2 years and 6 months for offering bribes in Vietnam.

PCI CASE (CONT)

- In early 2010, Huynh Ngoc Sy was prosecuted by Vietnamese investigation agencies for receiving bribes. In September 2010, Supreme People's Procuracy accused Huynh Ngoc Sy of receiving \$ 262,000.
- In October 2010, Ho Chi Minh City's Court sentenced Huynh Ngoc Sy to life imprisonment for receiving bribes. At appeal trial in September 2011, Huynh Ngoc Sy's sentence was reduced to 20 year imprisonment.
- The principle of reciprocity.

3. Lessons learnt from the PCI case

- Develop legal framework
- Establish cooperative relations among countries, including in criminal proceedings.
 - + sign multilateral and bilateral agreements on mutual legal assistance, extradition and transfer of sentenced persons
 - + sign bilateral agreement between law enforcement agencies of different countries.

3. Lessons learnt from the PCI case

- Law enforcement agencies of countries need to strengthen and expand close cooperation
- Countries also need to develop national legal documents to guide the application of the principle of reciprocity.

17/8/2014





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/007

Implementing a Compliance Program

Submitted by: Xian-Janssen

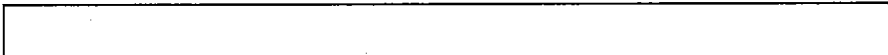


**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**



Implementing a Compliance Program

Cesar Rodriguez
President, Xian Janssen
14th August, 2014



Living Our Credo

Our Credo

We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services. In meeting these needs, everything we do must be of high quality. We must constantly strive to reduce our costs in order to maintain reasonable prices.

Employees must be hired properly and accurately. Our suppliers and distributors must have an opportunity to make a fair profit.

We are responsible to our employees, the men and women who work with us throughout the world. Everyone must be considered as an individual. We must respect their dignity and recognize their merit. They must have a sense of security in their jobs. Compensation must be fair and equitable, and working conditions must be safe and sane. We must be on hand to help our employees fulfil their family responsibilities.

Employees must feel free to make suggestions and criticisms. There must be equal opportunity for upward development and advancement for those deserving it. We must provide competent management, and this, above all, must be for the benefit of the patient.

We are responsible to the community in which we live and work and to the world community as well. A high standard of living, abundant food, work and recreation, and clean air and water are our goals.

We must find a way to cooperate in better health and education. We must maintain a good will. We must be true to our word.

The great responsibility is to our shareholders. They must be kept fully informed. We must report truthfully and fairly. Shareholders must be treated on an equitable basis. We must not pay dividends unless we have a reasonable assurance that we can continue to pay them.

Whenever we are faced with a choice of action, we must be guided by these principles.



我们的信条

我们和我们的医生、护士和病人，和所有使用我们产品和服务的母亲和父亲，和所有使用我们产品和服务的人，我们第一位的责任是满足他们的需求。为了满足这些需求，我们所做的一切必须是高质量的。我们必须不断努力降低成本，以便保持合理的价格。

我们必须正确地、准确地招聘员工。我们的供应商和经销商必须有合理盈利的机会。

我们对员工负有责任。全世界与我们一起工作的男男女女，每个人都应该被当作个体来看待。我们必须尊重他们的尊严，并承认他们的长处。他们的工作必须有安全感。薪酬必须公平合理，而且工作条件必须是安全、健康的。

我们必须帮助员工履行他们的家庭责任。

员工必须感到可以自由地提出建议和批评。必须给每个人提供平等的向上发展的机会和晋升的机会。我们必须为那些值得的人提供有能力的管理，而且这一切都必须为了病人的利益。

我们对生活和工作其中的社区，以及对世界社区负有责任。高水准的生活、丰富的食物、工作和休闲，以及清新的空气和水是我们的目标。

我们必须找到合作的方式，以改善健康和受教育。我们必须保持善意。我们必须遵守诺言。

我们对股东的重大责任是向他们提供充分的信息。我们必须公平、准确地报告。除非我们有合理的把握，否则我们不得支付股息。

当我们面临行动的选择时，我们必须由这些原则来指导。



A JOHNSON & JOHNSON COMPANY

The Foundations of our Compliance System

- Our Credo
- International Anti-Corruption Laws and regulations, including the US Foreign Corrupt Practices Act (FCPA)
- Chinese Anti-Corruption Laws and regulations
- International Federation of Pharmaceuticals Manufacturers & Associations (IFPMA)/RDPAC Code
- Health Care Business Integrity Guide (HCBI)

西安杨森
xian janssen



A PHARMACEUTICAL COMPANY
of Janssen-Cilag

| 8.14.2014 | 3

Set the Tone at the Top

- Every leader must be talking about compliance at every opportunity
 - Compliance session in every Sales/Marketing/Business meeting agenda
- Compliance officers must be involved in the Management Board of the Companies and all business decisions
- Compliance conversations that trickle down from the top, but also leave space to percolate up from the bottom

西安杨森
xian janssen



A PHARMACEUTICAL COMPANY
of Janssen-Cilag

| 8.14.2014 | 4

Make it Easy and Practical

- SOP's must be clear and easy to understand
- Specialized trainings to enhance compliance awareness and prevent, identify and escalate any potential violations
- Establish two-way communication and clarification on policies and implementation
 - i.e. Q&A sessions, monthly meetings, compliance alerts

100% Accessibility

- Hotline access to top management for reporting compliance concerns
 - Dedicated local and global hotlines
 - Guaranteed anonymity
 - Process managed out of the Business reporting lines
- Strict investigation process and authority
- Non-retaliation to whistleblowers explicitly guaranteed and enforced

Continuous Training

- Comprehensive on-board training for new employees
- Continued reinforcement throughout employment
 - Annual and on-going trainings
 - Compliance - Related Communications
 - Trainings to 3rd Parties
- Compliance message in every employee communications



Execute, Execute, Execute!

- Daily review and priority at all levels of management
- Compliance dashboards reviewed at Board Meetings
- Quick and transparent implementation of compliance decisions and enforcement
- Link Compensation to Compliance



To Conclude

- Compliance is everyone's responsibility and accountability
- Compliance is a **main competitive advantage**, and we will continue to put compliance and integrity at the core of everything we do.
- Compliance with laws, regulations and company policies and procedures is the key to "compliant and competitive growth" strategy.
- Zero tolerance for compliance deviations forms the foundation of our success today and in the future.



THANK YOU!



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/008

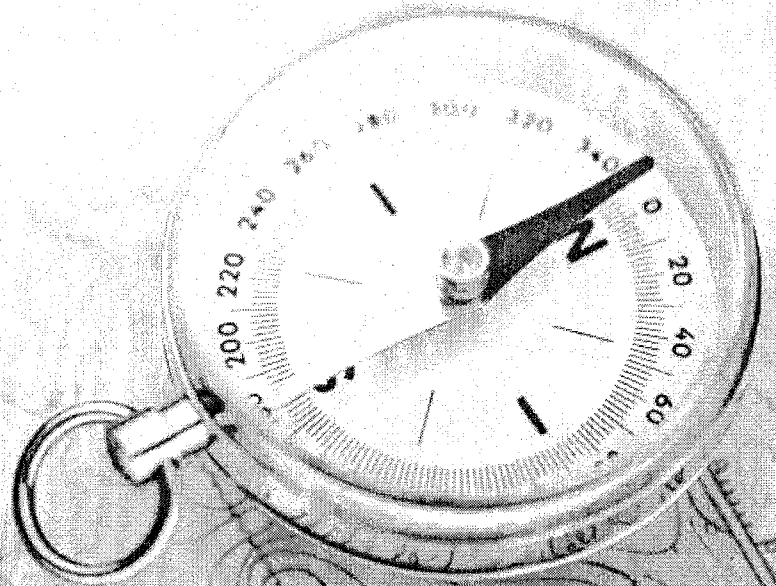
**Prevention of Business Bribery and Success @
Siemens**

Submitted by: Siemens



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

SIEMENS



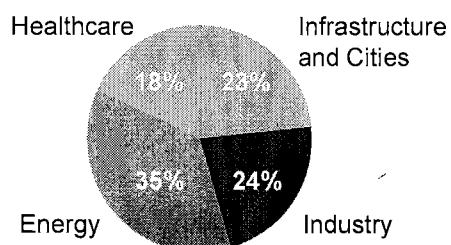
Beijing, August 14, 2014

Prevention of Business Bribery and Success @ Siemens

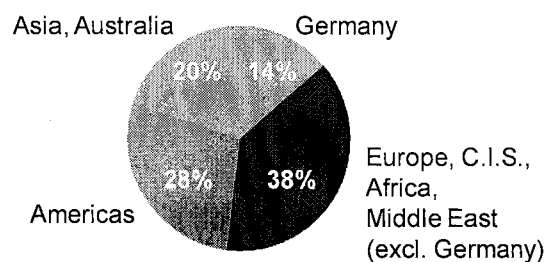
- APEC Anti-corruption Workshop on Combating Business Bribery

Siemens: Key figures

Revenue by Sector

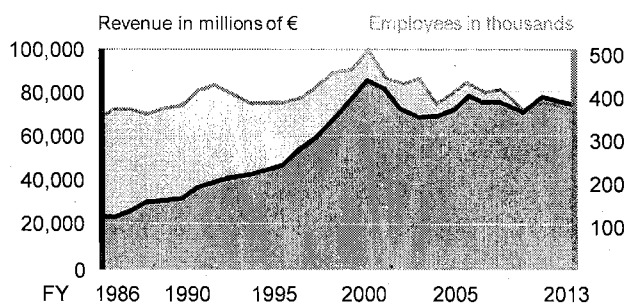


Revenue by Region



Based on customer location

Revenue and employees



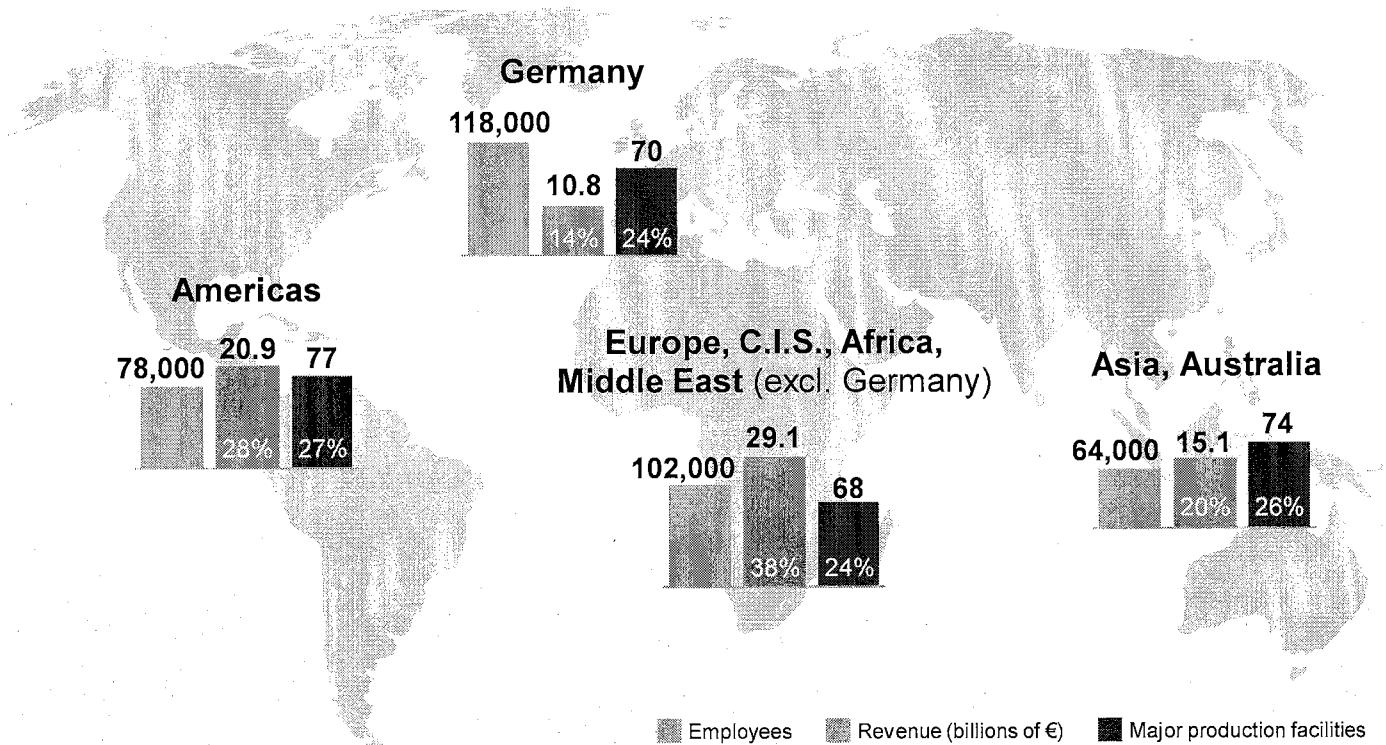
Continuing operations – comparison with previous year

In millions of €	FY 2012	FY 2013
New orders	75,939	82,351
Revenue	77,395	75,882
Income	4,642	4,212
Free cash flow	4,727	5,257
Employees	366,000	362,000

As reported in annual reports

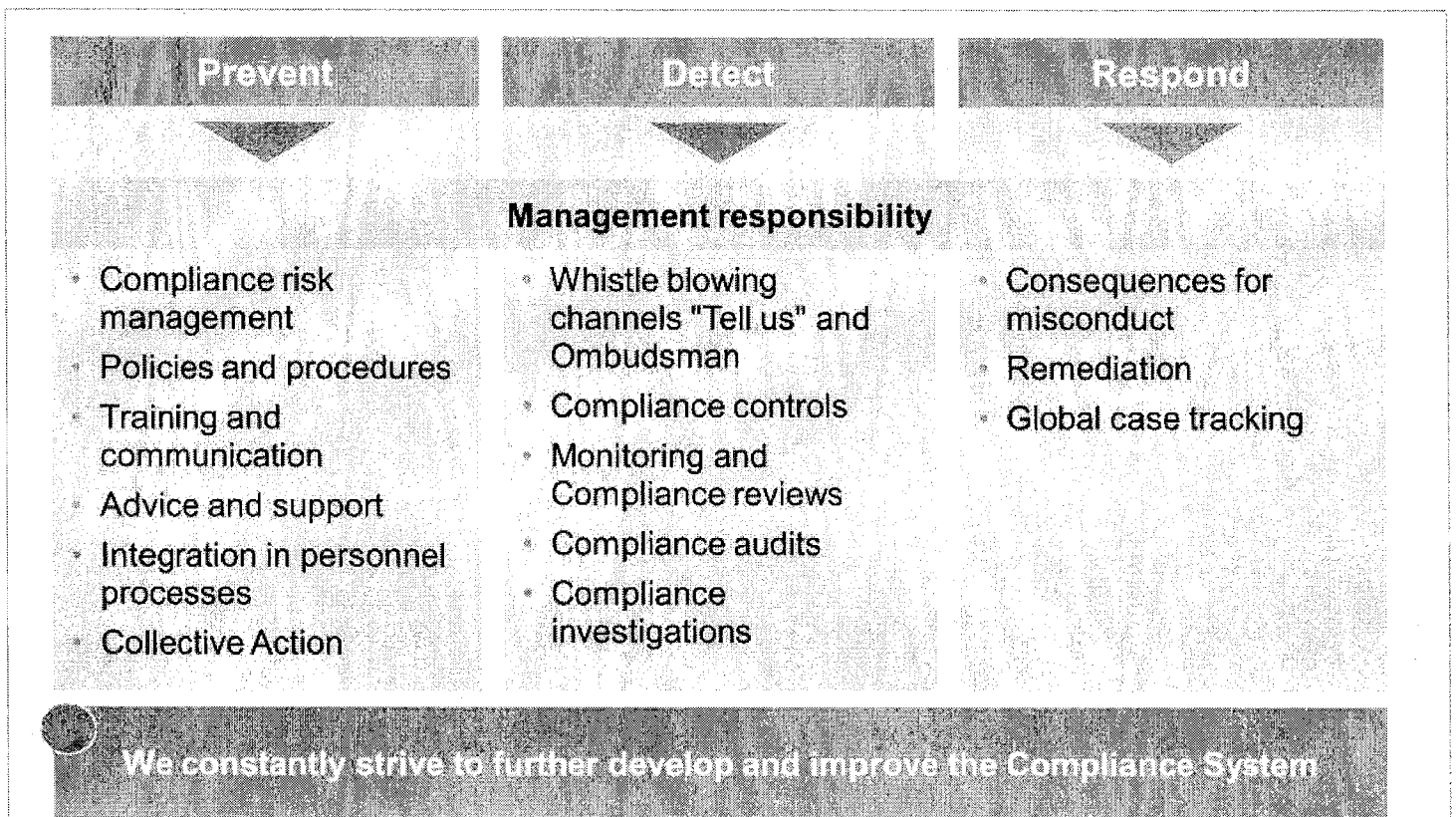
Unrestricted © Siemens AG 2014 All rights reserved.

Siemens: A strong local partner for customers
In more than 200 countries



As of September 30, 2013; All numbers refer to continuing operations
Unrestricted © Siemens AG 2014 All rights reserved.

Siemens Compliance System - Prevent, Detect and Respond



“Tone from the top”

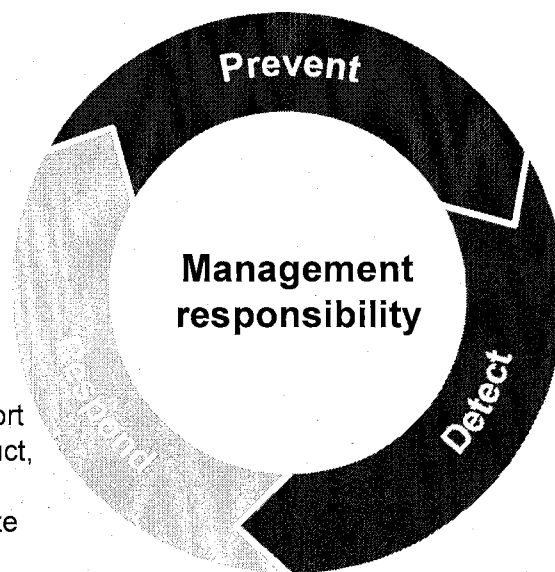
“The culture of a company and its values make the difference. People rightly associate Siemens with reliability, fairness and integrity.”

Joe Kaeser,
President and CEO of Siemens AG



Management responsibility is the focus

We continuously develop the Compliance System further in order to adapt it to changing requirements according to our global business.



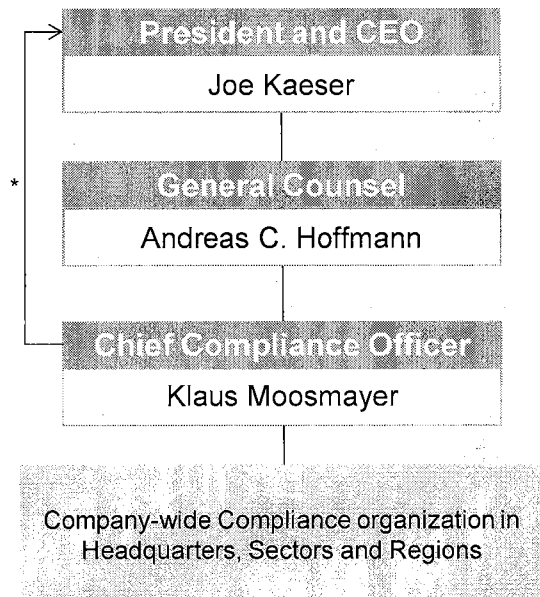
Effective preventive measures such as **risk management**, policies & procedures, training & communication enable systematic misconduct to be avoided

Explicit consequences and clear reactions support the prevention of misconduct, for example to punish wrongdoing and to eliminate deficiencies

Effective Compliance work requires complete clarification: whistle-blowing channels "Tell us" and ombudsman, as well as professional and fair **investigations**

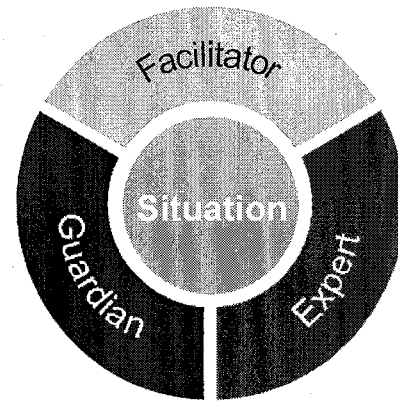
Clear roles & responsibilities for Compliance Organization

Direct connection to the CEO



* Direct reporting line to Board of Management and Supervisory Board re compliance risks and measures.

Roles of Compliance Officers

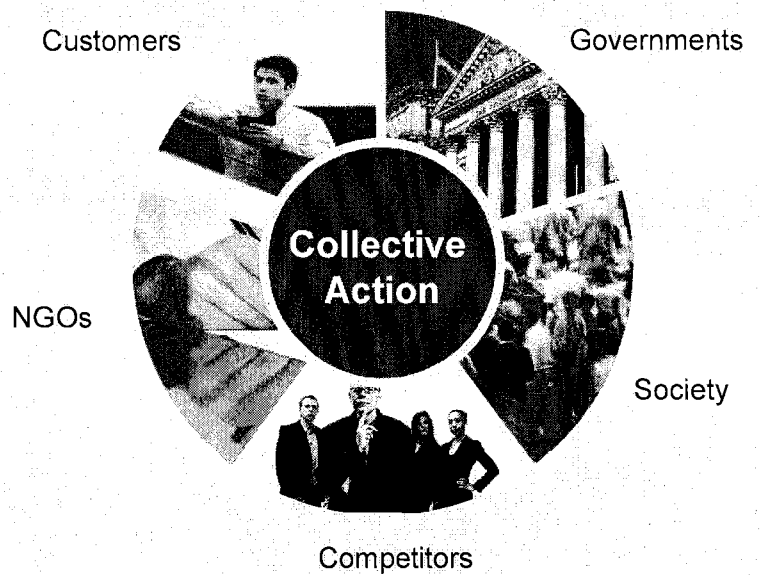


Tasks

- * Continuous communication about the importance of Compliance for Siemens
- * Bundling of company-wide expertise for avoidance of corruption and other violations of fair competition, and regarding data privacy
- * Governance for investigations and disciplinary response

Collective Action

- Create a level-playing field in concert with all stake-holders



SIEMENS

Thanks

Aili Zhao

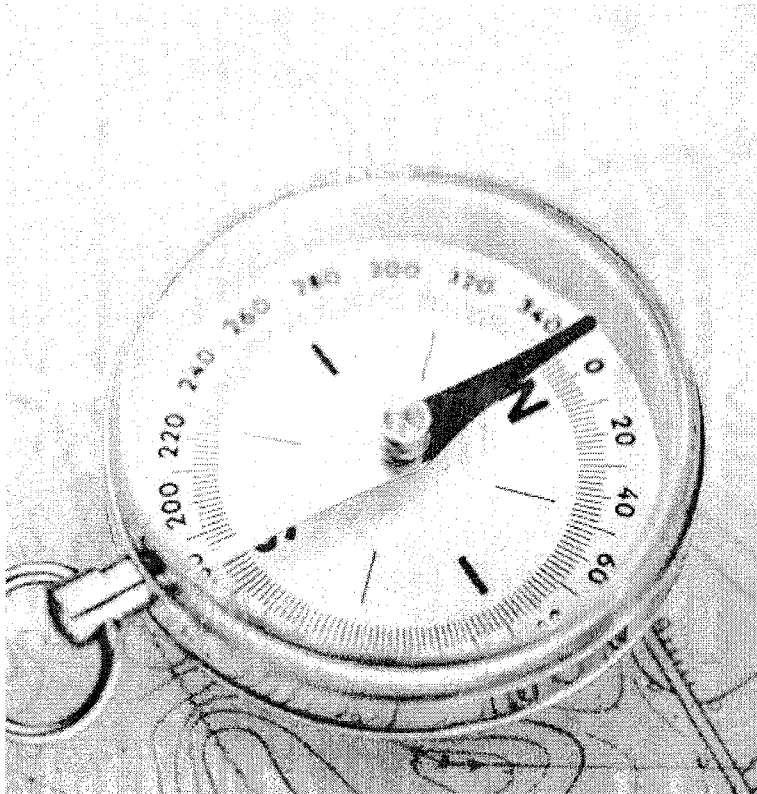
VP & Regional Compliance Officer

Siemens Ltd., China

Phone: +86 (10) 6476-3330

E-mail: ailli.zhao@siemens.com

siemens.com/compliance





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/009

China Minmetals Combating Business Bribery

Submitted by: China Minmetals Corporation



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

亚太经合组织“治理商业贿赂”高层研讨会
the High-level APEC Workshop of “Combating
Corruption and Bribery”

中国五矿商业贿赂治理

China Minmetals Combating Business Bribery

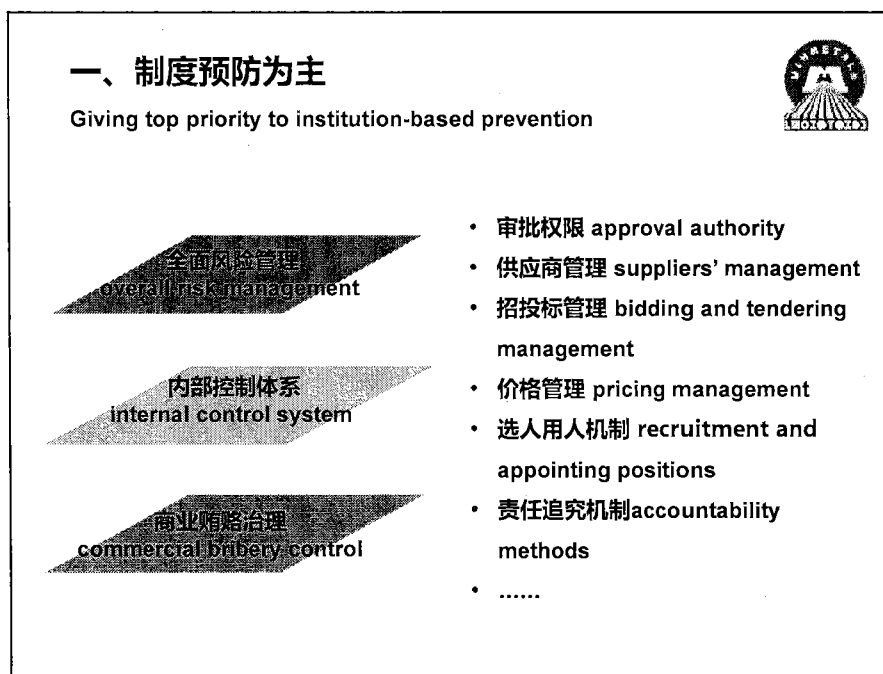
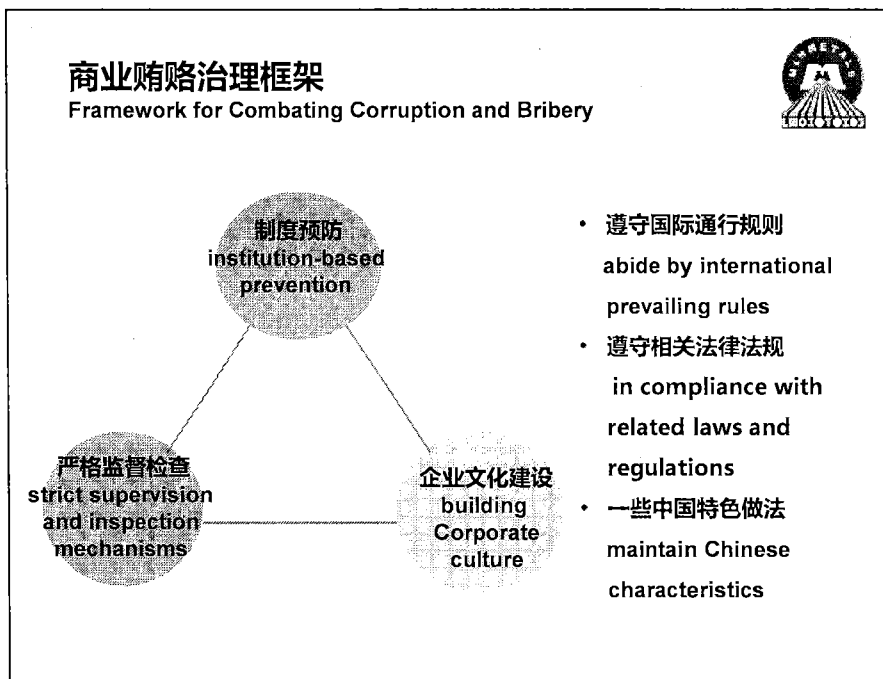


2014-8-14

中国五矿基本情况 About China Minmetals

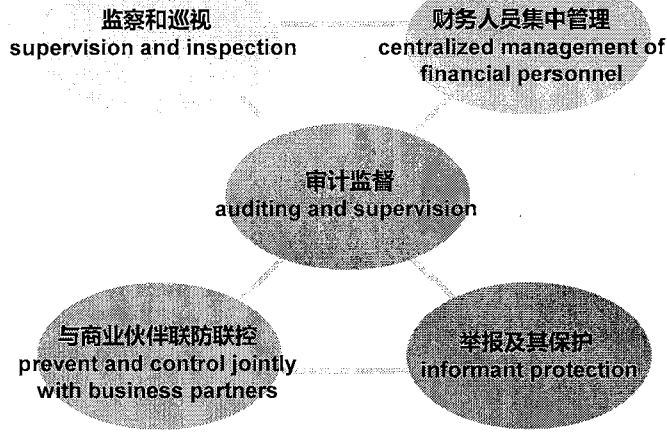


- 以金属及矿产品勘探开发、冶炼加工、贸易流通为核心主业，以金融服务、地产建设、矿冶科技等为新兴业务
an international metals and mining conglomerate mainly engaging in the exploration, mining, smelting, processing and trading for metals and minerals, which also has emerging businesses such as finance, real estate, and mining and metallurgic technology .
- 《财富》“世界500强”第133位，在全球金属类企业中位列第2位
ranks 133rd among Fortune Global 500 companies, and 2nd among global metal enterprises.
- 34个国家和地区设立分支机构，从业员工11.8万人
has established its branches in 34 countries and regions, with 118,000 employees.
- 海外员工超过1万人，海外资产约占1/3、业务收入占1/4
more than 10,000 overseas employees. Overseas assets account for 1/3 of total assets, overseas revenue accounts for about 1/4 of total.



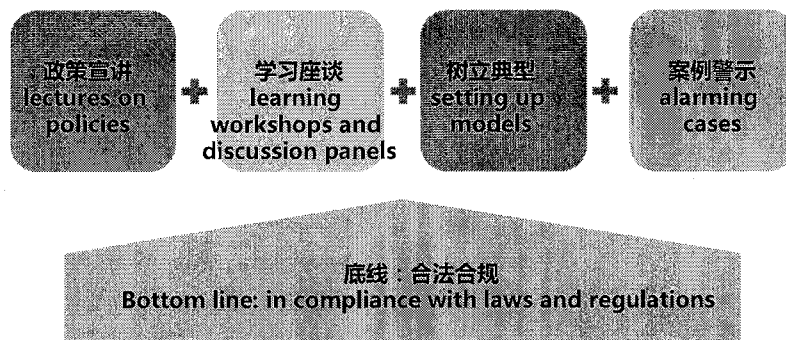
二、严格监督检查

Strict supervision and inspection mechanisms



三、商业伦理教育

Business ethics education



珍惜有限 创造无限

Cherishing Limited Resources, Pursuing Boundless Development





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/010

Foreign Bribery and Related Criminal Matters

Submitted by: Hong Kong, China



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

Foreign Bribery

and

Related Criminal Matters

No foreign bribery legislation in
Hong Kong

What if ...

What if ...

A Hong Kong resident / Hong Kong corporation bribes a foreign public official outside Hong Kong?

Intelligence to be passed to the foreign jurisdiction

What if ...

Someone / a corporation bribes a foreign public official in Hong Kong?

Section 9(2) of the Prevention of Bribery Ordinance

Section 9(2)

- Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-
- doing ... any act in relation to his principal's affairs or business (excerpt)
- shall be guilty of an offence.

What if ...

A foreigner / foreign corporation bribes a Hong Kong official outside Hong Kong?

Section 4(1) of the Prevention of Bribery Ordinance

Section 4(1)

- Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-
- performing ... any act in his capacity as a public servant ...(excerpt)
- shall be guilty of an offence.

What if ...

Two or more persons / corporations agree in Hong Kong to bribe a foreign public official outside Hong Kong?

The Case

- Executive A and executive B entered into an agreement with middleman C in Hong Kong to bribe a senior public official in jurisdiction D.
- C made the corrupt offer to official in D.
- A and B were charged with and convicted of Conspiracy to bribe the official with about US\$2 million.
- Convictions were quashed on appeal.

ICAC, Hong Kong has jurisdiction if:

- any person / corporation bribes a foreign public official in Hong Kong.
- foreigner / corporation bribes a Hong Kong public official outside Hong Kong.
- two or more persons / corporations agree in Hong Kong to bribe a foreign public official outside Hong Kong?
- two or more persons / corporations agree, in/outside Hong Kong, to bribe a foreign public official in Hong Kong.



**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/011

**Enforcement of Foreign Bribery and Other
Corruption Offences Against Corporations**

Submitted by: Singapore



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

Enforcement of Foreign Bribery and Other Corruption Offences Against Corporations

APEC Anti-Corruption Workshop 14 August 2014

Teng Khee Fatt
Deputy Director, Investigations, CPIB
Singapore
14 August 2014

Outline

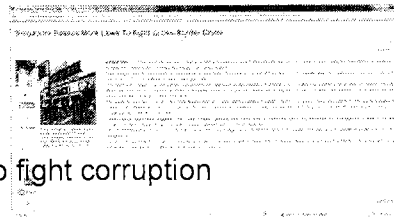
- Singapore's Approach to Fight Foreign Bribery
- Corporate Liability in Local Bribery
- Extra-Territorial Jurisdiction – Singaporean & Singapore's Corporations
- Corporate Liability for Foreign Bribery
- Challenges of Enforcing Corporate Liability for Foreign Bribery



Singapore's Approach to Fight Foreign Bribery

❑ Reasons for combating foreign bribery

- ❖ Globalization
- ❖ Foreign investments
- ❖ Foreign bribery risks
- ❖ Strong Gov.'s support to fight corruption



❑ The Corrupt Practices Investigations Bureau (CPIB)

- ❖ Sole investigative agency
- ❖ Function independently



3

Singapore's Approach to Fight Foreign Bribery

❑ The Prevention of Corruption Act

- ❖ Receiving, accepting, soliciting, or giving, offering, promising
- ❖ Dealing with anyone, public officials, foreigners offenders in Singapore
- ❖ Extra-territorial jurisdiction

❑ The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act

- ❖ Confiscation of corrupt proceeds
- ❖ Laundering of corrupt proceeds



4

Corporate Liability in Local Bribery

- Singapore's corporation is liable for bribery committed in Singapore
- Foreign HQ office or corporation committed bribery in Singapore
- Place of offence in Singapore
- The PCA applies to all persons (includes any company or association), whether a national or otherwise, if the offence is committed in Singapore



5

Corporate Liability in Local Bribery – Case Example

- Singapore's corporations were charged for corruption
- 8 transport companies were charged in court for corruptly giving bribes to 32 CISCO outriders who provided escort services to the companies to ensure public safety when the transport companies were transporting oversized or bulky cargo on the public road.



6

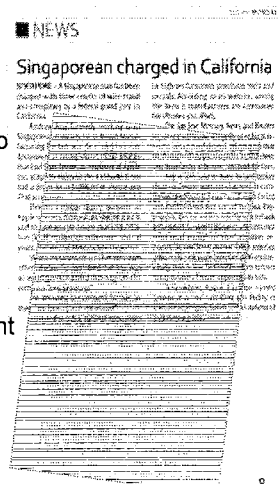
Extra-Territorial Jurisdiction - Singaporean

- ❑ The extra-territorial jurisdiction [Section 37 of the PCA] only applies to Singaporean who committed a corrupt offence outside of Singapore
- ❑ If there is no Singaporean involved in the corporation, the extra-territorial jurisdiction is not applied
- ❑ For example – A Singaporean businessman giving bribes to a foreigner (Apple Case)



Extra-Territorial Jurisdiction - Singaporean (Case Example)

- ❑ Apple Case
 - ❖ Jack Chua, the Managing Director of Jin Li Mould Manufacturing Pte Ltd and his Sales Director, Andrew Ang, were charged for corruptly giving bribes totalling US\$387,600 to Paul Devine, a Global Supply Manager of Apple Inc in US, in return for securing business contract worth US\$55.8 million between 2007 and 2010
 - ❖ On 20 Dec 2013, Jack Chua pleaded guilty and was sentenced to 9 months' imprisonment
 - ❖ Andrew Ang claims trial
 - ❖ Paul Devine was indicted in US



Extra-Territorial Jurisdiction – Singapore's Corporation

- ❑ Singapore's corporation is liable for foreign bribery
- ❑ The offences include bribery of foreign public officials, foreign agents or anyone
- ❑ Two Singapore's corporations were charged for giving bribes to foreigners



Corporation Involved in Foreign Bribery – Case Example 1

THE STRAITS TIMES, TUESDAY, DECEMBER 23, 1997

HOME

Keppel fined \$300,000 for giving \$8.53 m in bribes for contracts

By Lim Seng Jit

Money given to a manager in Britain

Keppel Corporation pleaded guilty yesterday to giving bribes totaling \$8.53 million to a manager in Britain to secure contracts for the company between January 1987 and May 1994.

The money — given in October 1994 — was paid to a manager of Petroleum Shipping, a subsidiary of Shell, to secure contracts for the company between January 1987 and May 1994.

Keppel's financial controller, Hong Kong-based, represented the business representative in court yesterday.

Van der Meer himself had pleaded guilty to charges in a Stockholm court on Dec 13 last year, and was sentenced to three years' imprisonment.

Keppel had raised the issue in the early 1990s to find out why Keppel was unsuccessful in several of its tenders to Petroleum Shipping.

Chas was told by van der Meer that Keppel's prices were too high and the marketing manager said he would look into the matter.

Chas then filed out a commission form, which he passed to Van der Meer to secure payment into van der Meer's personal account in Singapore.

Once van der Meer started receiving payments from Keppel he gave information about the company's leaders, including the price and decline to complete a job, to either Chas or Van der Meer, then Keppel's financial controller.

When the bill for the job was given to van der Meer, he obtained the amount and referred to the "fee" he was promised earlier.

Chas passed the information on to King who discussed it with other Keppel directors, including Van der Meer and Van der Meer.



Corporation Involved in Foreign Bribery – Case Example 1

- ❑ Van Der Horst, a Repair & Technical Manager of Petroleum Shipping Ltd, a UK-based subsidiary of Exxon, accepted a total of S\$8,492,343.30 from a Singapore's company, Keppel Shipyard, from Jan 92 to May 95.
- ❑ In return, Van Der Horst helped Keppel Shipyard in securing tenders relating to the ship repair works
- ❑ Van Der Horst was charged by UK Serious Fraud Office in Southampton for corruptly accepting the gratifications and he was sentenced to 3 years' imprisonment



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Corporation Involved in Foreign Bribery – Case Example 1

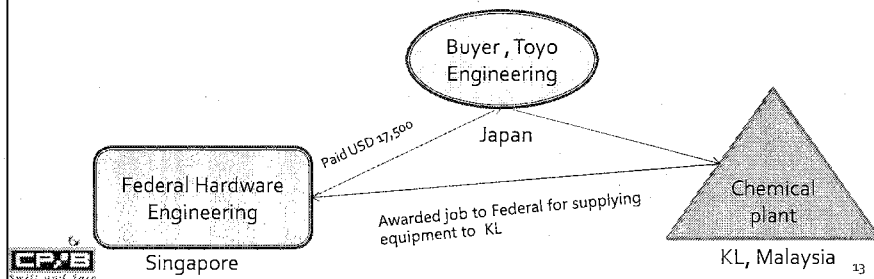
- ❑ Keppel Shipyard was liable for the offence:
 - ❖ The corrupt payments were approved by the highest level of management
 - ❖ Directors acted corruptly on behalf of the corporation and acted for an organizational cause
 - ❖ No personal gain from the transactions
- ❑ Keppel Shipyard was charged in Singapore as a corporate entity for corruptly giving bribes to Van Der Horst. Keppel Shipyard was fined a total of \$300,000



12

Corporation Involved in Foreign Bribery – Case Example 2

- Federal Hardware Engineering Co Pte Ltd was sentenced to a fine of \$60,000 for corruptly giving a bribe of US\$17,500 to a Japanese buyer of Toyo Engineering in Japan. In return, the Japanese buyer placed orders with Federal for the supply of equipment to a chemical plant in Malaysia



Corporate Liability in Foreign Country

- Singapore's corporation is liable for committing a foreign bribery in foreign country (i.e. place of offence is outside Singapore)
- The foreign bribery is related to the business or on behalf of a principal residing in Singapore (or a corrupt act is partly committed in Singapore)
- If Singapore's company gives instruction to an individual to give bribe outside Singapore, it can be charged for abetment [s 108A of the Penal Code, Abetment in Singapore of an offence outside Singapore]

Corporate Liability in Foreign Country

- ❑ If Singapore's corporation (only Singaporean) gives bribes to foreign officials in foreign country, it can be charged for:
 - ❖ Abetting in the commission of a corrupt offence in foreign country [s108B of Penal Code, Abetment outside Singapore of an offence in Singapore]
 - ❖ Being a party of conspiracy in the commission of the offence [s 120 of Penal Code]
- ❑ It may be prudent for the foreign country to charge the offender (or Singapore's corporation) in that country, when the offence takes place in foreign country (or when the link to Singapore is weak)



15

Singapore's Foreign Corporation Involved in Foreign Bribery

- ❑ If a foreign company in Singapore abetted in the commissions of a principal corrupt offence or give direction to pay bribes in overseas, it may be charged in Singapore. As long as the commission of the offence or the abetment of an offence was performed in Singapore
- ❑ Section 108A of the Penal Code enables Singapore to exercise jurisdiction over the offence which is committed outside Singapore, regardless of the nationality of the accused person



16

Challenges of Enforcing Corporate Liability for Foreign Bribery

- Application of local anti-Corruption law in foreign country
- Criminal procedure code
- Foreign offender's legal rights
- Assistance must be consented by witnesses
- Personal security in foreign country
- Existence of evidence in foreign country



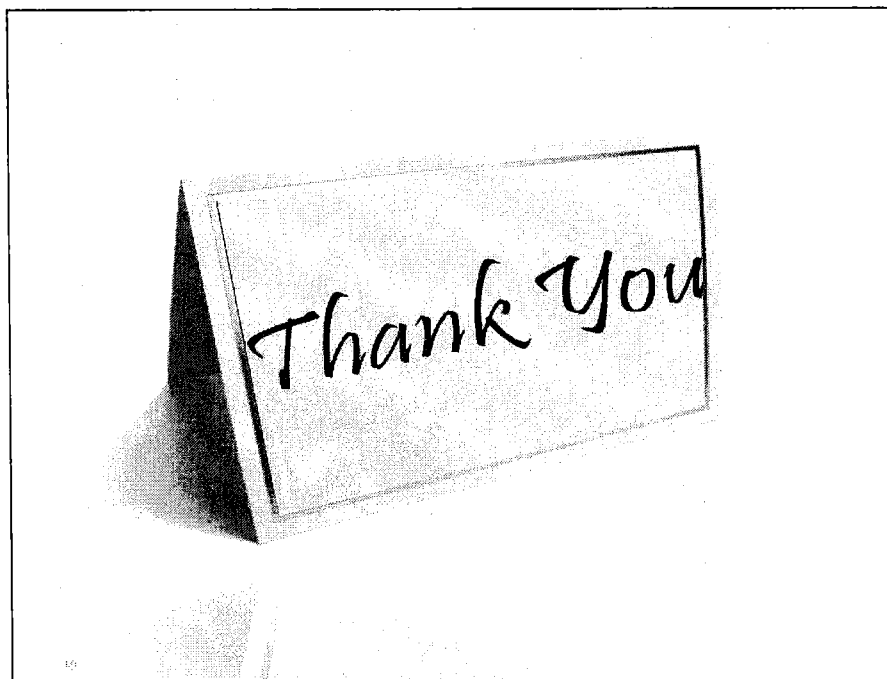
17

Challenges of Enforcing Corporate Liability for Foreign Bribery

- Admissibility of evidence gathered in foreign country
- A few individuals (level of authority) vs corporate liability (large Company)
- Corporate corrupt intent (Mea Rea)
- Debarment of foreign corporations (change of directors)



18





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/012

**Dilemmas and Possible Solutions in Combating
Transnational / Cross-Border Business Bribery
Committed by Business Entities**

Submitted by: Chinese Academy of Social Sciences



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

Dilemmas and Possible Solutions in Combating Transnational/Cross-border Business Bribery Committed by Business Entities

By Prof. Shen Enwei,
National Academy of Economic Strategy,
Chinese Academy of Social Sciences

• **Background: Legal Environment of the Combat against Business Bribery Committed by Business Entities**

• **Part 1: Challenges and Dilemmas in Investigating Criminal Responsibility of Enterprises as Legal Persons Involving in Transnational/Cross-border Briberies**

• **Part 2: Suggestions about Combating Transnational/Cross-border Business Bribery within APEC**

Background: Legal environment of the combat against business bribery committed by business entities

It is acknowledged by worldwide countries and regions that, as business entities, transnational enterprises that committed business bribery shall assume corresponding civil, administrative and criminal liabilities.

According to the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC), each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish liability of legal persons for participation in the offences established in accordance with the conventions. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

Meanwhile, the laws of many economies have similar clauses as above mentioned.

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In China, the major laws and regulations prohibiting business bribery are:

- Criminal Law of the People's Republic of China, which defined 9 types of bribery crimes,
- Law of the People's Republic of China against Competition by Inappropriate Means,
- Interim Provisions on the Prohibition of Business Bribery.

Moreover, many other laws and regulations including Company Law of the People's Republic of China Foreign Trade Law of the People's Republic of China, Construction Law of the People's Republic of China also have defined and prohibited business bribery from different aspects. According to these laws, Chinese enterprises as legal persons that committed business bribes shall bear corresponding civil, administrative and criminal liabilities.

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Challenges of Investigating

Investigating Criminal Responsibility of Enterprises as Legal Persons Involving in Transnational/Cross-border Briberies

- (a) Lack of consensus in the understandings of the criminal liability of legal persons.
- (b) Lack of punitive power against corporate crimes.
- (c) Lack of effective regulatory cooperation between the jurisdictions where the headquarters and subsidiaries of transnational enterprises are located.

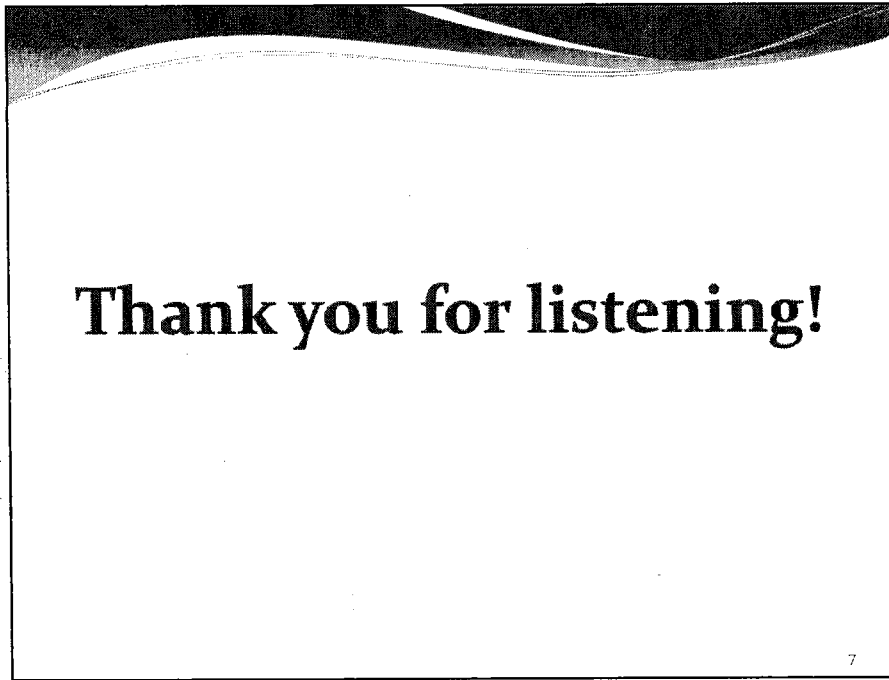
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2. Suggestions about Combating

Transnational/Cross-border Business Bribery within APEC

- (a) Explore to build an APEC accountability system of business entities based on UNCAC
- (b) Establish a reasonable and equal mechanism for comprehensively assessing the offensive transnational business entities.
- (c) Set up dual-regulation systems echoing the Basel III Accords
- (d) Build a pragmatic and efficient multilateral and bilateral cooperation mechanism.

6





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/013

Enforcement of Bribery Offences Against Corporations

Submitted by: University of Bristol



**High-Level Anti-Corruption Workshop on
Combating Business Bribery
Beijing, China
14 August 2014**

Enforcement of bribery offences against
corporations

Celia Wells
Beijing 14 August 2014

OUTLINE

- Background
 - Increased international cooperation and enforcement
 - Forms of investigation and sanction
- Corporations as legal persons
 - Comparative attribution models
- OECD Anti Bribery Convention
 - UK Bribery Act 2010

ENFORCEMENT TRENDS

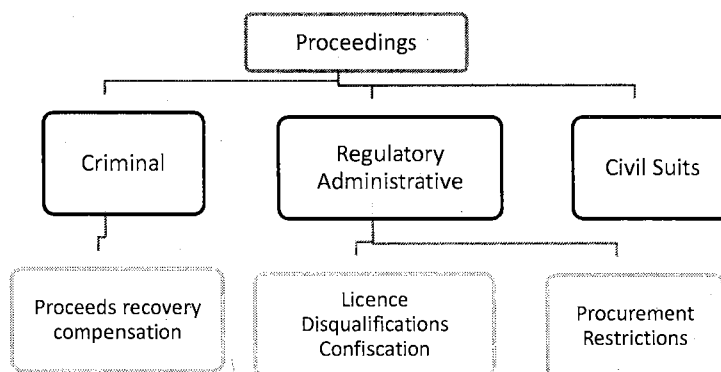
- Increased international cooperation:

- US (FCPA)
- Germany
- UK

Headline cases:

- Siemens
- BAE Systems

Investigation and sanctions



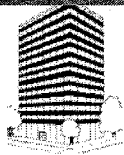
Corporations as persons

Corporations are problematic subjects of criminal law

Accountability gap between human and legal persons

Defendants – legal and human

Corporation



Subsidiaries

Employees/agents



Directors

Shareholders



Attribution models

How does a corporation *intend* or *know*?

- Agency/Vicarious/strict
- Identification or directing mind/senior officer
- Organisational/corporate culture

Cross cutting concepts

- Failure to supervise
- Due diligence defence

OECD Anti Bribery Convention 1997

- Requires states to introduce
 - Corporate liability and
 - Effective and dissuasive sanctions
- 2009 good practice recommendation
 - Non tax deductibility
 - Money laundering

Baseline standards for corporate liability

OECD 2009 - liability of legal persons ...

- Should *not require prosecution* or conviction of *individuals* and
- the *level of authority* of the person whose conduct triggers the liability of the legal person should be *flexible* and reflect the wide variety of decision-making systems in legal persons

<http://www.oecd.org/dataoecd/11/40/44176910.pdf>

UK Bribery Act 2010

- Section 1- active bribery offence
- Section 2- passive bribery offence
- Section 6- bribery of foreign public official
[overlaps with section 1]
- Section 7 - commercial organisations failure to prevent subject to defence of adequate procedures

Section 7 offence

- Commercial orgn liable for conduct that would amount to ss. 1 or 6 offences by *employees, agents and subsidiaries* (s.8)

Unless it shows it has adequate procedures to prevent (s.7)

- Jurisdiction: the offence can be committed by a body incorporated in or *carrying on business* in UK (s. 7)
- and committed anywhere in world (s.12)

S. 9 Guidance – adequate procedures

- 1. Proportionate procedures
- 2. Top level commitment
- 3. Risk assessment
- 4. Due diligence
- 5. Communication (and training)
- 6. Monitoring and review

www.justice.gov.uk/guidance/bribery.htm

Enforcement activity

- Siemens – fined \$800m in US and Euro 395m in Germany
- BAE - \$400m fine in US
- Investigation launched by UK Serious Fraud Office against Glaxo Smith Kline activities in China

Thank you





**Asia-Pacific
Economic Cooperation**

2014/SOM3/ACT/WKSP/014

Enforcement of Foreign Bribery and Other Corruption Offences Against Corporations

Submitted by: Peru



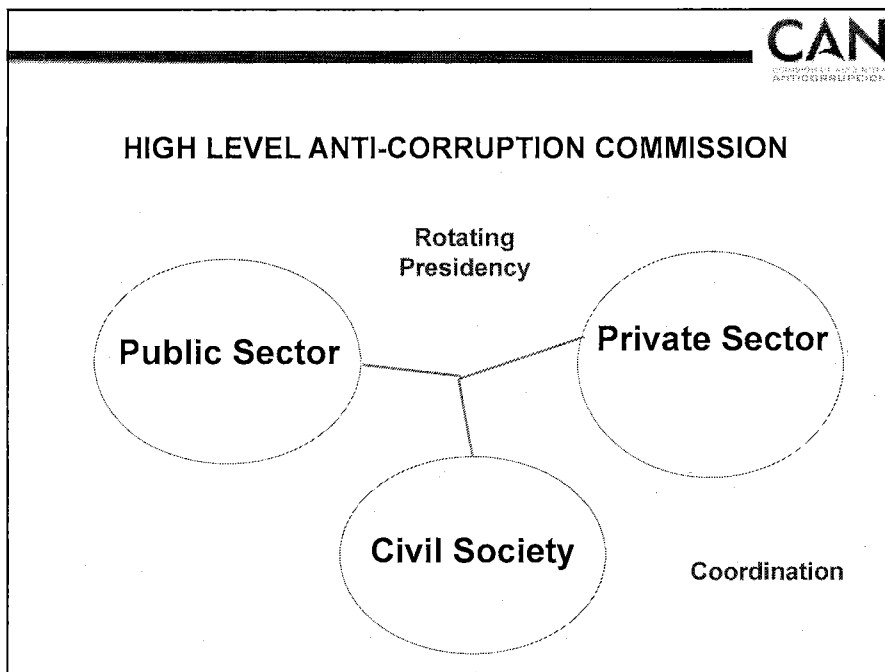
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CAN
CORPORATE ANTI-CORRUPTION NETWORK

**ENFORCEMENT OF FOREIGN BRIBERY AND OTHER
CORRUPTION OFFENCES AGAINST CORPORATIONS**

**Susana Silva Hasembank
High Level Anti-Corruption Commission**

China, August 2014






HIGH LEVEL ANTI-CORRUPTION COMMISSION

FUNCTIONS

- Coordinate actions between law enforcement agents, such as, the judiciary, the General Attorney Office and the Comptroller General Office, by ensuring the autonomy that corresponds to each entity.
- Promote and coordinate actions for preventing corruption through active participation of the private sector and civil society.
- Elaborate a national strategy to prevent and combat corruption and supervise its enforcement.



National Anti-Corruption Plan 2012-2016

Objective 1	Interinstitutional coordination between institutions in charged of preventing, detecting, investigating and sanctioning corruption.
Objective 2	Prevention of corruption
Objective 3	Timely Investigation and effective sanction of corruption in administrative and judicial fields.
Objective 4	Active participation of the civil society and business sector in the fight against corruption
Objective 5	Positioning Peru in the international anti-corruption arena

15 strategies and 22 indicators

OECD WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

- In March 2009, the Government of Peru requested **admission** as a full member of this working group and expressed its **intention to sign** the OECD Anti-Bribery Convention.
- In September 2012, Peru was informed it had not been admitted as a full member of this working group because it lacked an effective penal framework to fight against transnational bribery, and it was advised to introduce some amendments in its penal legislation:
 1. The fine (pecuniary sanction) for natural persons.
 2. The value confiscation of illegally obtained assets.
 3. The autonomous liability of legal persons.

Likewise, it was recommended to **strengthen its extradition policy**.

CONFISCATION

- By Law No 30076, published on August 19, 2013, Art. 102 of the Penal Code was amended by introducing the value confiscation of illegally obtained assets.
- By this amendment, it is possible to affect legally obtained assets of the corrupt person who may want to transfer or sell property or spend the proceeds obtained through bribery.
- In 2012, Legislative Decree No 1106 was issued, providing for the confiscation of assets obtained through bribery, without conviction.
- The “non-conviction based confiscation”, called forfeiture of property in our legislation, applies when it is not possible to sanction the offender because they are fugitive, absent, or they have died, or the penal action has expired due to the passage of time .

CAN
CORPORATE AND
ASSOCIATED PERSONS

PENALTY OF FINE

- By Law No 30111, published on November 26, 2013, a penalty of fine applies for the commission of international bribery, both active and passive (Arts. 393-A and 397-A of the Penal Code).
- The penalty orders the offender to pay the State a certain amount of money expressed in days-fine.
- International bribery is punished with a 365-730 days-fine.
- The amount of the day-fine must not be lower than 25% nor higher than 50% of the offender's average income; and it must be paid within 10 days after the sentence was pronounced.

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CORPORATE AND
ASSOCIATED PERSONS

AUTONOMOUS LIABILITY OF LEGAL PERSONS

1. Peruvian Penal Code order a series of measures applicable to legal persons, prescribed as "accessory consequences", but they subject their application to prior identification and sanction of the natural person who committed the crime.
2. The accessory measures are the following:
 - ✓ Temporary (not longer than 5 years) or final closure order of their facilities.
 - ✓ Dissolution.
 - ✓ Suspension of activities (not longer than 2 years).
 - ✓ Temporary (not longer than 5 years) or final prohibition to operate

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ETHICS OF PUBLIC OFFICIALS

**AUTONOMOUS LIABILITY OF LEGAL PERSONS
DRAFT BILL**

- ✓ Establishes direct autonomous liability of companies, including **public companies**.
- ✓ Applies only to **the crime of international bribery**.
- ✓ Imposes a **fine** for up to six times the benefit obtained, and if it is not possible to establish the amount of this benefit, it is reckoned in relation to the income of the company, and between 10 and 500 tax units.
- ✓ The company **is not liable** when there is a prevention system in place before a crime is committed, and if such system is set up afterwards, it is an **extenuating circumstance**.
- ✓ Establishes a Public Record of convicted companies.

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ETHICS OF PUBLIC OFFICIALS

EXTRADITION POLICY

- The current administration, acting on the new anti-corruption policy, extradited a foreign official that the former administration had denied. With this decision, Peru has **sent a clear message that our country is not, and never will be a haven for corrupt individuals.**

CONCLUSIONS

- The measures taken show the firm decision of the Peruvian Government and that of the High Level Anti-Corruption Commission to fight directly against corruption and avoid impunity and to compliment the recommendations given in international forums.
- Aside the process of incorporation into the WGB of the OECD, Peru is fully committed to strengthen its regulatory framework in order to enforce foreign bribery against corporation.
- Therefore, I am glad to inform you that the last week the decision of submitting the draft bill to the Congress was made.