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Fostering Ethics Eroding Corruption & Fraud

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"It's not success at all cost; it's success only the right way and without compromise"

Presentation Overview

- Compliance and Ethics – the Framework for Success
- Two Areas of Regulatory Focus
 1. Anti-Corruption
 2. Tax Evasion
 - Foreign Account Tax Compliance Act (FATCA)
- Questions

Universal Objectives

- Economic Development & Growth
- Financial Stability & Transparency
- Consumer Protection
- Enhanced Customer Service
- Efficient Processes

■ *Respect*

We treat others as we would like to be treated ourselves. We do not tolerate abusive or disrespectful treatment. Ruthlessness, callousness and arrogance don't belong here.

■ *Integrity*

We work with customers and prospects openly, honestly and sincerely. When we say we will do something, we will do it; when we say we cannot or will not do something, then we won't do it.

■ *Communication*

We have an obligation to communicate. Here, we take the time to talk with one another... and to listen. We believe that information is meant to move and that information moves people.

■ *Excellence*

We are satisfied with nothing less than the best in everything we do. We will continue to raise the bar for everyone. The great fun here will be for all of us to discover just how good we can really be.

*(Excerpt from **Enron's** Code of Ethics)*

Fraudsters – In the Headlines

Bernard Ebbers

The former CEO of WorldCom. He was convicted of fraud and conspiracy as a result of WorldCom's false financial reporting, and subsequent loss of USD 100-billion to investors. He is currently serving a 25-year prison term. Portfolio.com and CNBC named Ebbers as the fifth-worst CEO in American history; Time Magazine named him the tenth most corrupt CEO of all time.



Scott Sullivan

The former WorldCom Financial chief, was sentenced to five years in prison for his role in the largest accounting fraud in U.S. history. Sullivan, 43, pleaded guilty to conspiracy, securities fraud and making false financial filings. Sullivan became the fifth WorldCom executive to be sentenced to prison for the \$11 billion fraud.



Mark Swartz

The former Tyco Finance Chief Mark Swartz was sentenced to up to 25 years in prison for stealing hundreds of millions of dollars from the company.



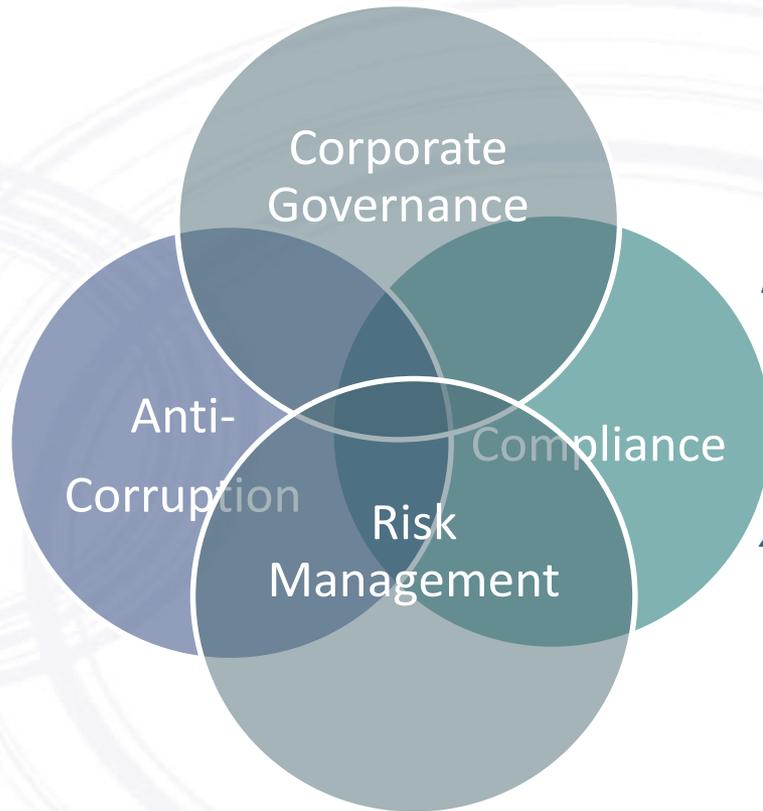
Barings Bank & Nick Leeson

A twenty-seven-year-old trader in the Singapore office of Barings Bank (“Barings”), Nick Leeson, lost over \$1 billion of the firm’s money through transactions in futures contracts. Initially, Leeson had made large profits for the bank by dealing in derivatives and futures. After experiencing losses, however, he used an error account to disguise his bad trades. Because Leeson was involved in the settlement of his own trades, he was able to sustain this scheme until he left the firm. As a result of Leeson’s losses, Barings eventually was declared bankrupt and sold to the ING Group.

Bernard Madoff and.....

Compliance: A Key Element of Corporate Governance

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Corporate Governance: Provides the control mechanisms and necessary independence to ensure that strategies from executive management are carried out systematically and effectively; leadership is transparent and accountable

Risk Management: Establishes the processes through which management identifies, analyzes, and responds to risks that might adversely affect realization of the organization's business objectives

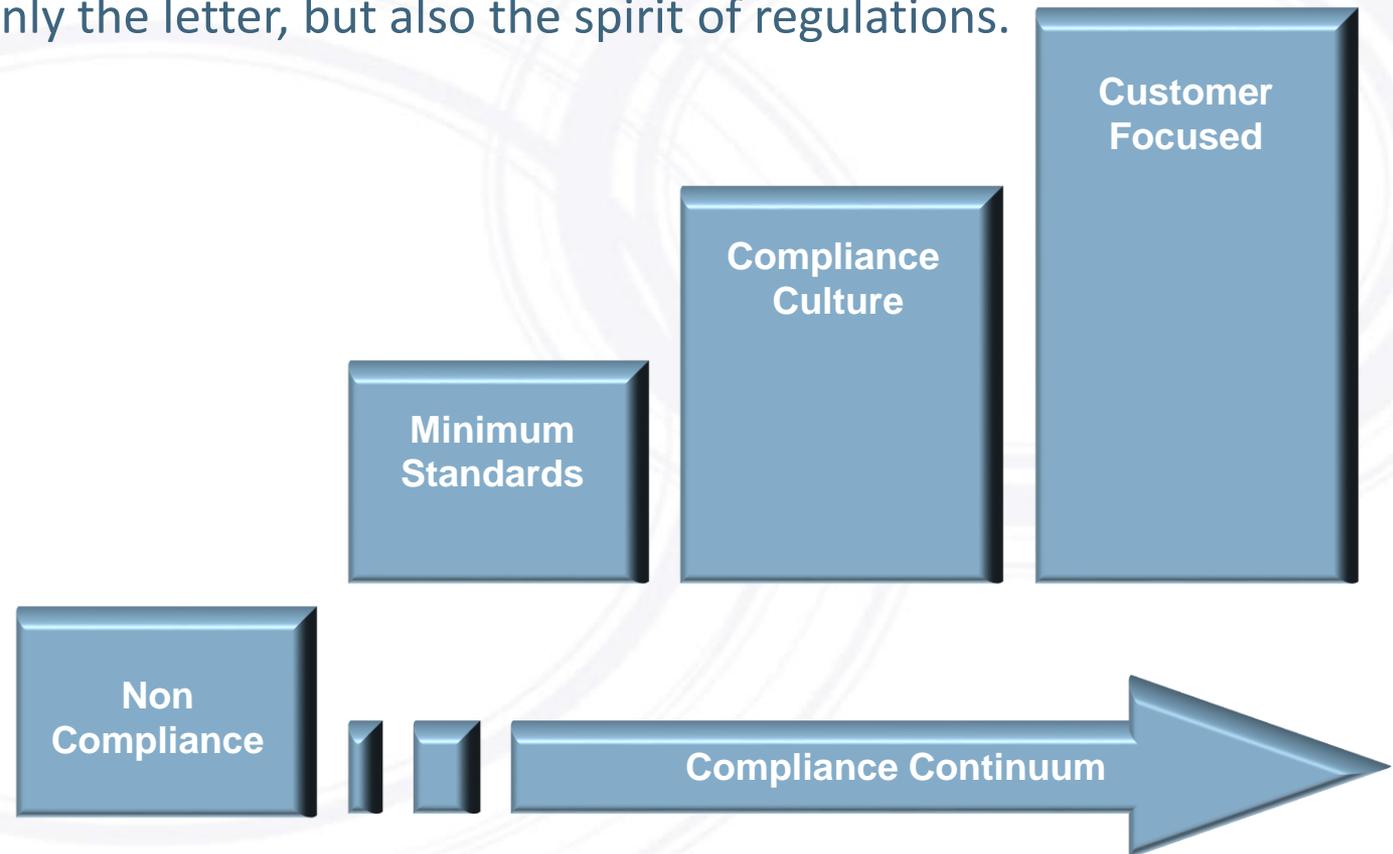
Anti-Corruption: influences corporate ethical conduct and compliance with laws. Promotes enhanced transparency, accountability, financial economic stability, as well as increases the effectiveness of government actions.

Compliance: should go beyond minimum legal requirements to promote compliance principles based on **ethical values** which enhances customer loyalty and helps protect "reputation" capital

Compliance Continuum



- Institution's actions should be based on its values, and should evolve to include the need to do the right thing, applying not only the letter, but also the spirit of regulations.



Fostering a Culture of Ethics

■ **Model the Way**

Lead first by example, conduct business with integrity, identify and reprimand others that fall short of meeting an established Code of Conduct

■ **Inspire a Shared Vision**

Advocate an environment in which ethics is paramount, transparency practiced, and corrupt behaviour not tolerated

■ **Challenge the Process**

Be open to and champion change that drives a culture of sound principles, particularly when doing so is unpopular

■ **Enable Others to Act**

Empower those around you to participate in the identification and escalation of corrupt practices; maintain an effective mechanism for whistle blowing

Compliance – A Business Positive

- Compliance is and always will be good for business
- A strong compliance program speaks to organizational integrity, a building block of ethical corporate culture
- An ethical corporate culture helps build a strong reputation within our customers, shareholders, employees, and communities

Think Different

Manage the
Present

+

Anticipate
the Future

+

Drive
Innovation

=

Effective
Risk
Management



Protect the
Bank's
Reputation

Discipline

1. Developing an Anti-Corruption Program

Corruption: A Global Pandemic

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The World Bank has identified corruption as being among the greatest obstacles to economic and social development globally



The reputation damage to a brand caused by bribery allegations can be substantial even months or years before actual facts are established, as allegations spread overnight on the Internet.

- A major obstacle to institutions and the rule of law – harmful in established cultures and even more so in emerging ones.
- Leads to depletion of national wealth – hinders the development of fair market structures and distorts competition.
- Undermines peoples’ trust in the political system, its leadership and institutions.

“Corruption is a cancer that steals from the poor, eats away at governance and moral fiber, and destroys trust.” - Robert B. Zoellick, President, World Bank

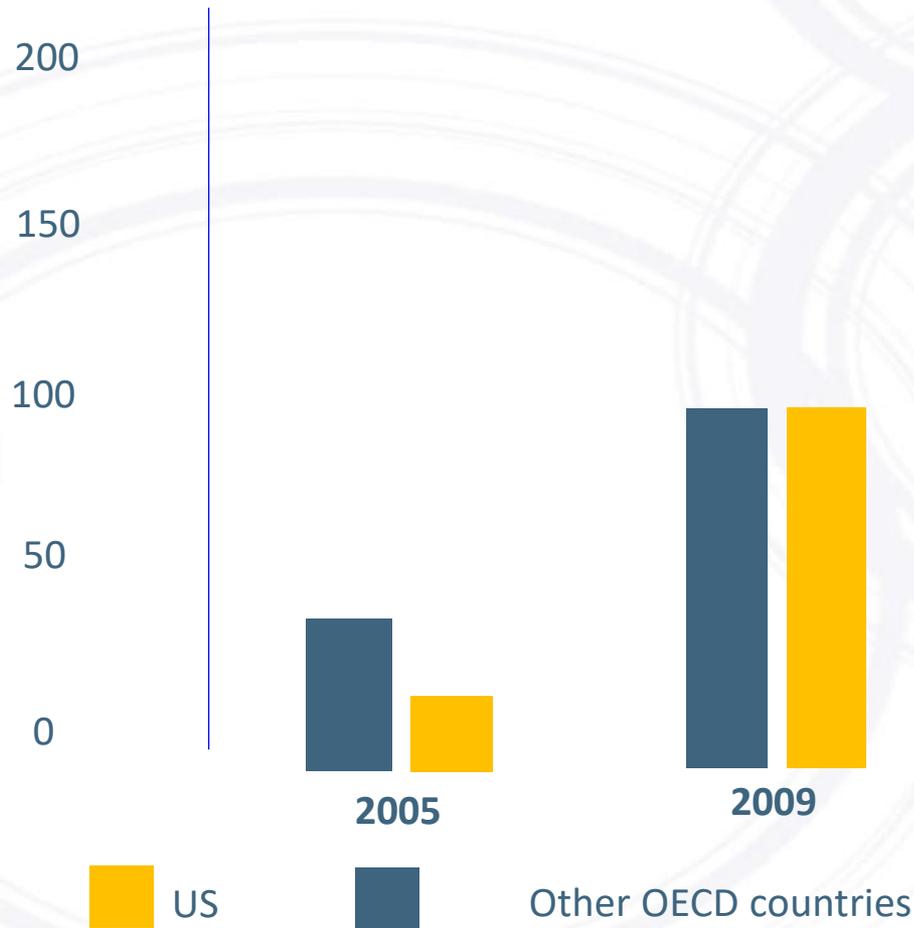
Intergovernmental and Non-Governmental Organizations



- Organization for Economic Cooperation and Development (OECD)
- United Nations
- World Bank
- Transparency International
- International Financial Institutions Anti-Corruption Task Force



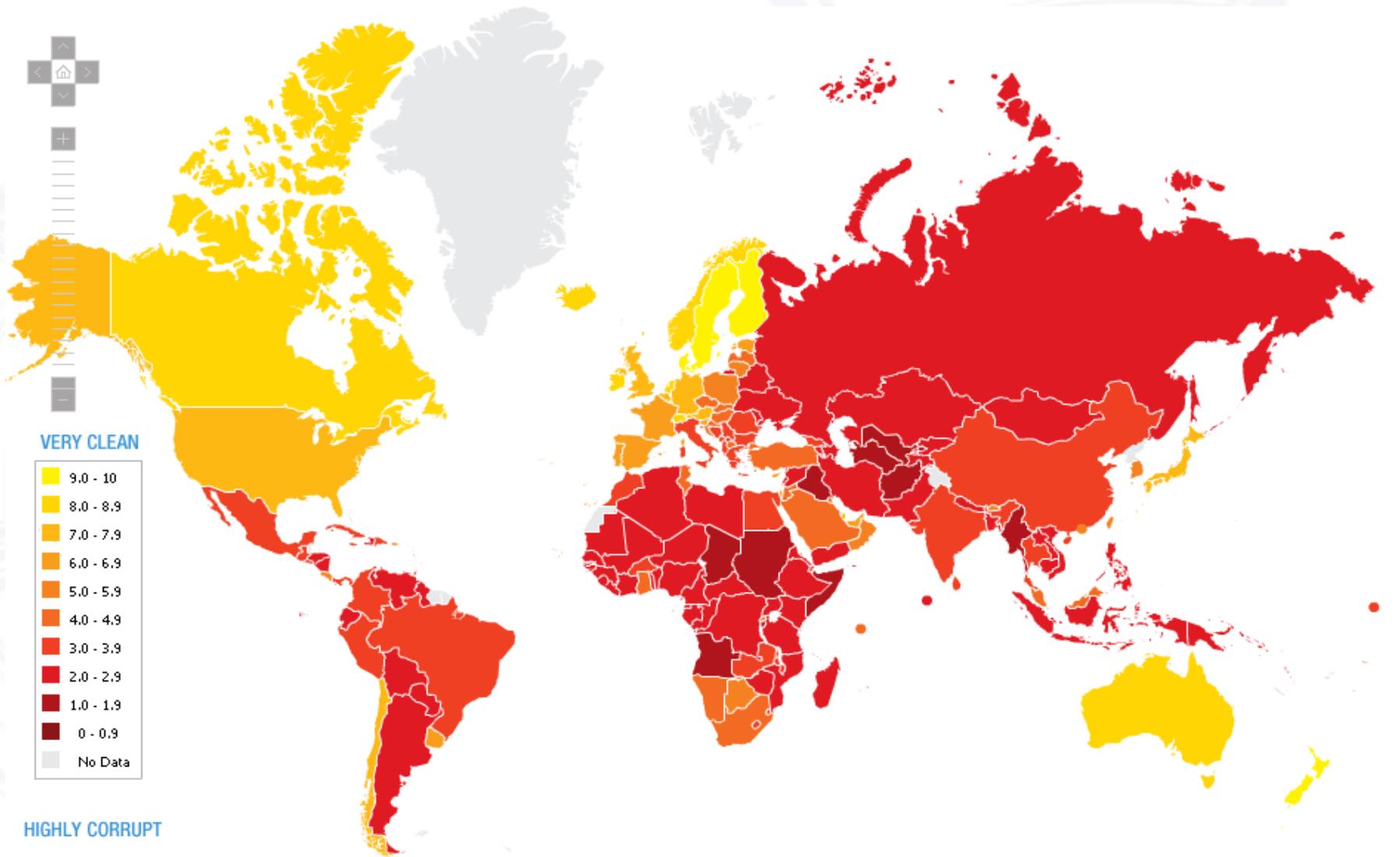
OECD Foreign Bribery Investigations



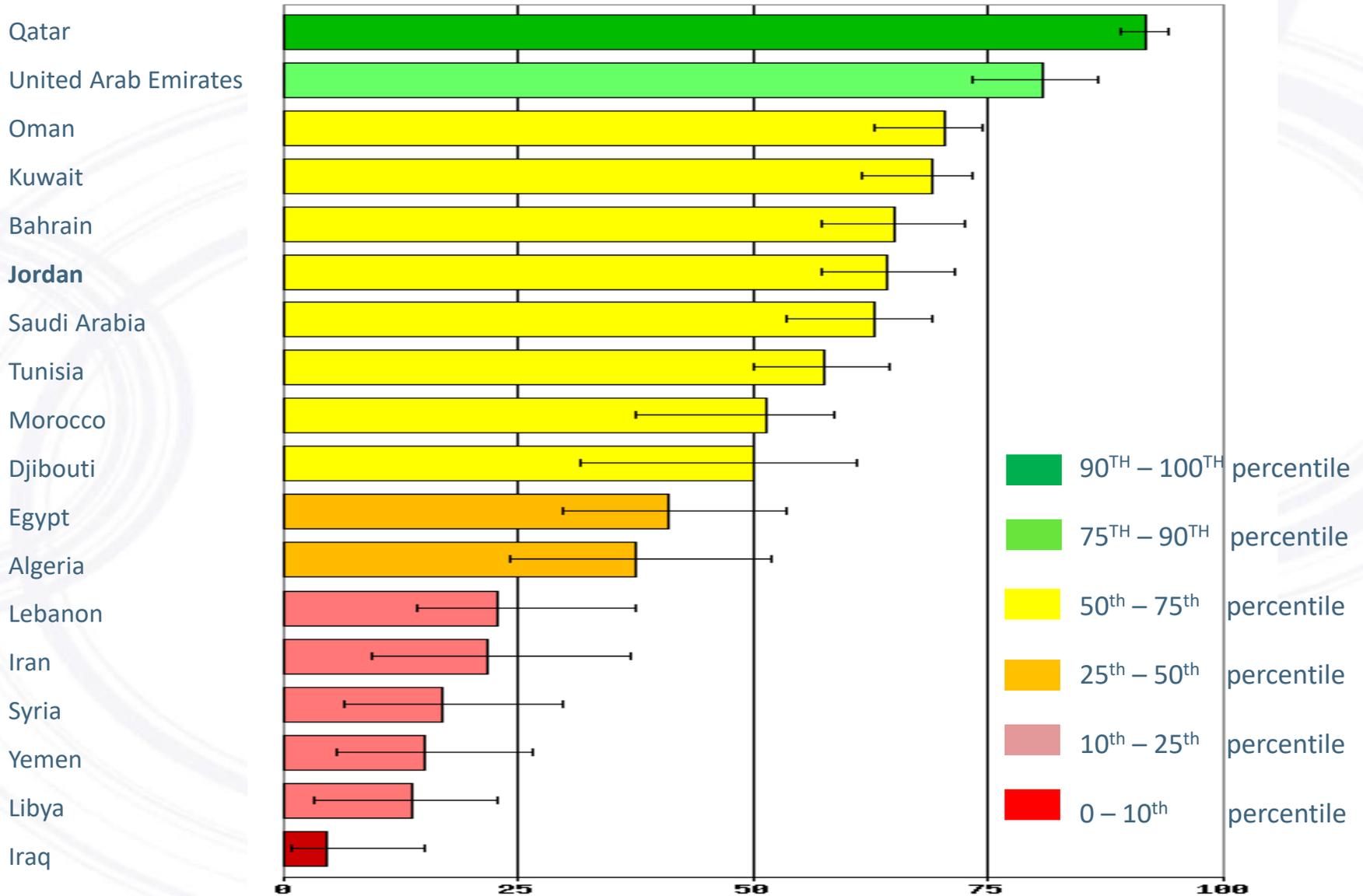
Source: Transparency International Progress Reports (2006 - 2010)



Corruption Perceptions Index – 2010 Results



Control of Corruption 2009 – MENA Region



Incidence of Bribery & Corruption

Experienced an incident of bribery or corruption



Asked to pay a bribe to retain or win business



Lost business to a competitor that paid a bribe



Don't know
 No
 Yes

Q Has your company had an incident of bribery or corruption in the last two years? Do you know if anyone in your company has ever been asked for a bribe to win or retain business? Has your company ever lost business to a competitor as a result of paying a bribe?

Shown: Ernst & Young Survey – Percentage of all respondents (1186)

Emphasizing Anti Corruption - Jordan

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*His Majesty King Abdullah chairs a meeting at the Anti-Corruption Commission in Amman
7 March 2011 (Photo by Yousef Allan)*

“Combating corruption is a top priority to achieve comprehensive reform and sustainable development” – His Majesty King Abdullah

Anti-Corruption legal framework in Jordan

- **Penal Code of 1960**
Bribery is criminalized for both briber and bribed (Articles 170 – 173)
- **Financial Disclosure Law - November 2006**
Stipulates that specified government officials must disclose their assets in a sealed envelope that is to be opened by the Chief Justice in case of complaint
- **Anti-Corruption Commission Law - December 2006**
Corruption defined not only as misuse of power and economic crime, but also actions related to wasta and nepotism
- **Access to Information Law - April 2007**
Every Jordanian has the right to receive information requested if a legitimate interest in such information exists
- **Anti-Money Laundering Law – May 2007**
Tax evasion became a predicate crime of money laundering upon amendment of the law in 2010

■ **UN Convention against Corruption - 2003**

First legally binding international anti-corruption instrument; obliges countries to implement a wide range of anti-corruption measures affecting their laws, institutions and practices (i.e. Anti-Corruption dedicated prevention, criminalization, and international cooperation)

- Jordan ratified the UN Convention against Corruption - 2005
- Accepted, approved or acceded by 144 countries - 2010

■ **Foreign Corrupt Practices Act (FCPA) - 1977**

A US federal law enacted to prevent the bribery of foreign government officials for commercial advantage.

■ **UK Bribery Act – 2010**

A recent UK law that makes it a criminal offence for someone to offer, ask for, or accept a bribe. Organizations will be committing an offence if they fail to prevent bribery by someone associated with them. The scope covers UK organizations even if the business is conducted outside the UK.

As a compliance officer or a banker, are you comfortable if your financial institution knowingly:

- Bribes a government official to get a licence to do business, or to open a branch in a desirable location?
- Grants a credit facility to a company engaged in corruption?

Corruption is operationally defined as the misuse of entrusted power for private gain.

Key concepts:

- **Intent** – the intention and assumption by a person offering a benefit that the person who receives the benefit from a corrupt act probably will act *primarily* in return for the conferring of the benefit.
- **Acting or omitting to act** – the intent can be that the person receiving the benefit either act or deliberately fail to act.
- **A third party can benefit** – the benefit conferred can be directed to the benefit of a third party.

Making the Right Choices

- **We are friendly people; gifts and entertainment are part of the culture.**
Intent – Why are we giving the gifts and entertainment, for general good will, or to achieve a particular purpose?
- **These gifts (payments) don't mean anything; a show of respect is expected no one is being influenced by any of this.**
What would happen if we stopped or gave smaller gifts?
- **This is another example of Western imperialism. Why are they imposing their standards on us?**
These are not Western standards, these are company standards.
- **If we don't make this payment, we'll lose the business (or the tax benefit, or our goods won't clear customs, etc.) Our competitors are doing it.**
We must be willing to take a short-term hit for the long-term benefit of saying No.

Risk areas will vary for companies based on the nature of their operations, the volume of business they do with government entities, business locations, company size and regulatory environment.

Corrupt practices include:

- Bribery
- Facilitating payments
- Fraud
- Extortion or coercion
- Inappropriate gifts and hospitality
- Inappropriate political contributions
- Inappropriate charitable contributions and sponsorship



$(\text{Power} + \text{Authority}) - (\text{Accountability}) - (\text{Ethics}) = \text{Corruption}$

$(\text{Opportunity} + \text{Rationalization}) - (\text{Ethics}) = \text{Fraud}$

Corporate Pressures

- Excessive pressure to demonstrate profitability, or to meet targets
- Failing to meet debt covenants

Individual Pressures

- Threats to personal financial position (loss of job, lower income)
- Mentality of 'one missed deal, and I could lose my job'

Anti-Corruption/Anti-Fraud Program Elements



Concentrate on understanding, with specificity, the following:

- Nature of all business with governments, Board members, or other related parties, including contributions to political groups and government-sponsored charities
- Use of third parties or agents to deal with governments
- Vendor and corporate customer commitment to anti-corruption
- Staff acknowledgment of the Code of Conduct and adequacy of related training
 - Practices related to facilitation payments, as well as gifts and entertainment
 - Identification, reporting, and management of instances of fraud, extortion, coercion, and bribes
- Internal Audit process to provide independent testing

“By taking a strong stance on promoting transparency and fighting corruption, companies not only mitigate reputational risk, but they also live up to their responsibility as corporate citizens and can take an active part in the emerging solutions to some of the greatest issues facing the world today.”

-Cobus de Swardt, Managing Director, Transparency International



2. Tax Evasion:

- Foreign Account Tax Compliance Act (FATCA)

Tax evasion is a predicate crime for AML in Jordan

- Income Tax Law of 2009 - tax evasion identified as a crime
- AML/CFT Law 46/2007 as amended by Temporary Law No. 31/2010 made Tax Evasion a predicate crime for AML

Challenges

- Identifying and reporting suspicious activity associated with tax evasion
 - Differentiating tax planning from tax evasion
 - Use of personal accounts for conducting business
- Enhancing customer awareness of requirements to maintain separate accounts for business without tipping-off
- Competitive disadvantage if legislation/regulation not consistently applied and enforced

What is the right thing to do?



The Washin

Friday December 10, 2010

Deutsche to Pay \$553M

Deutsche Bank admitted criminal wrongdoing for taking part in fraudulent tax shelters that let clients hide billions of dollars, and agreed to pay \$553.6 million to settle the case, U.S. prosecutors said Tuesday.

The New Yo

Friday 5, 2011

India goes after 'black money'

India's government, under opposition pressure over billions of dollars of untaxed money held overseas by rich Indians, said Saturday it had begun legal action against 17 people with alleged funds abroad.

The Daily S

Wednesday February 18, 2009

UBS Agrees To Pay \$780 M

In the latest episode during which it ran afoul of lawful banking practices, UBS has agreed to provide the Department of Justice with information about certain customers of its cross-border business, stop providing bank services to U.S. customers with undeclared accounts and pay \$780 million in fines, penalties, interest and restitution.

Foreign Account Tax Compliance Act (FATCA) – March 2010 (Effective 2013)

Requirements:

- Foreign financial institutions are required to enter into an agreement with the IRS; otherwise they will be subject to a 30% withholding tax on the U.S. revenues and on proceeds from the sale of U.S. securities of all its customers, (i.e. not just the U.S. customers)
- Comply with verification and due diligence requirements
- Report annually to IRS information for U.S. accounts and provide additional information as required
- Impose 30% withholding tax requirement on account holders that do not provide documentation as to their status
- Obtain waivers for U.S. accounts if foreign law would prevent reporting, or close the account if waiver not obtained
 - The IRS has no discretion for the information received and can share information with other tax authorities

U.S. Accounts Include:

- Individuals
 - U.S. citizens, U.S. green card holders, U.S. residents
 - Individuals that satisfy the US “substantial presence test”
- Entities: where a U.S. persons, whether directly or indirectly, owns 10%

Challenges

- Examine means of identifying U.S. accounts (e.g. dual citizens, complex corporate structures, pre and post account opening, etc.)
 - a U.S. address associated with any account holder
 - a U.S. place of birth
 - A “hold mail” address that is the sole address on file
 - A Power of attorney or signatory authority granted to a person with a US address; or has a standing instructions to transfer funds to an account maintained in the U.S. or directions received from a U.S. address
- Introduce necessary system changes, and anticipate associated compliance costs
- Withholding 30% may give rise to a breach of contract claim if the laws of the jurisdiction in the particular country do not recognize the withholding as a valid offset; if so, unauthorized withholding could be a criminal offense under local law.
- Assess impact as it relates to privacy issues taking into consideration Bank Secrecy and local privacy and data protection laws/regulations
 - Local regulatory requirements may prohibit closure of an account for this reason

IRS Notice 2010-60 of August 2010

- **Preexisting Accounts:** FFIs are allowed to rely on electronically searchable information maintained by the FFI and associated with the account
- Transition to new accounts rule for existing “individual Non-U.S. Accounts”:
 - (2) years where average monthly balance greater than USD1 Million
 - (5) years generally
- **New Accounts:** FFIs must obtain and examine documentary evidence establishing U.S. or non-U.S. status and cannot solely rely on electronically searchable account information
 - Update A/C opening application to inquire about “other” citizenships

2011

Planning and Preparation

- Establish FATCA Task Force from Stakeholders to analyze systems and procedures impacted
- Identify existing U.S. accounts
- Define information collection process for existing and new account holders
- Develop Communication Plan for internal and external parties
- Analyze implication of local Laws vs. FATCA rules

2012

Requirements and Process Design

- Prepare detailed business requirements for each area impacted
- Amend system to capture new requirements (i.e. create new field for Tax ID No)
- Confirm system functionality (e.g. withholding 30%, IRS reporting)
- Prepare training program for relevant functions

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Q & A

“The real challenge isn’t knowing what is right, but knowing how to act on those convictions”

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