

CORRUPTION IN THE NATURAL RESOURCES SECTOR



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► INTRODUCTION

It is a sad fact that the abundance of natural resources and economic growth appear to be negatively correlated. Statistically a significant number of countries which are rich in natural resources have grown more slowly than other countries - and this is often blamed on in country corruption¹.

According to Global Witness² ...*countries rich in natural-resources, such as oil, gas, timber or minerals, frequently end up blighted by inequality and bad governance.*

However, the pressures on companies operating internationally not to be involved in any form of corruption, however prevalent that may be in their local marketplaces, are mounting, and there is not a natural resource company which can afford to ignore these pressures and to plead ignorance about global or local laws against corruption. Natural resources companies are now exposed to serious reputational risk from civil society in both developed and emerging market countries as well as the prospect of major regulatory fines and investigation costs if they are suspected of engaging in corrupt activities.

Bribery and corruption in the natural resources sector may occur at any stage of exploration, development or production. The UK Bribery Act, which came into force on 1 July 2011, is widely acknowledged, together with other UN and OECD codes for multinational companies, as providing the clearest guidance on what is expected of a company in the anti-corruption arena - namely to fully understand the domestic legislation where it is operating and to implement adequate policies and procedures to address the risks it may face, especially when dealing with government officials and entering into business relationships with local companies.

BDO's view is that it is critical for natural resources companies to understand what anti-corruption legislation affects them in all the jurisdictions in which they operate, whether this is local market legislation, legislation or regulation in their home market or extra-territorial legislation, and for them to implement adequate policies and procedures to prevent corruption by their employees or third parties under their control.

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish ... Corruption is a key element in economic under-performance and a major obstacle to poverty alleviation and development.

**KOFI-ANNAN,
former Secretary General,
United Nations**

¹Research Paper by Tobias Kronenberg, Faculty of Economics and Business Administration, MERIT, University of Maastricht, the Netherlands.

²<http://www.petritgashi.000space.com/MA%20Entrepreneurship%20and%20LED/Materialet%20per%20lexim/The%20curse%20of%20natural%20resources.pdf>
<http://www.globalwitness.org>

► CONTEXT OF PUBLICATION

This leaflet provides a brief overview of the anti-corruption legislation in force in countries where there is significant natural resources activity - whether this is the funding of projects or the onsite exploration and development of projects.

The legislation in force in many of these countries is generally modelled on the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions³ and the United Nations Convention against Corruption (UNCAC)⁴ guidelines. Many countries are part of regional groupings and their anti-corruption legislations have also been influenced by regional treaties and protocols. For example, the Economic Community of West African Protocol on the fight against corruption, the South African Development community Protocol against Corruption and the Organisation of American States Inter-American Convention against Corruption⁵.

It is important to note that in some emerging market countries, the anti-corruption legislation in place has not been tested by the Courts and there is a risk that international companies may fall foul of such law, despite seemingly fully complying with the statute as enacted.

“Though the bribe be small, yet the fault is great.”

LORD EDWARD COKE

³The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a number of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the ‘supply side’ of the bribery transaction.
<http://www.oecd.org/dataoecd/4/18/38028044.pdf>

⁴United Nations Convention against Corruption: The UN Convention against Corruption (UNCAC) was negotiated and agreed among approximately 129 nations. It represents an international consensus about what states should do in the areas of corruption prevention and criminalisation, as well as international cooperation and asset recovery. It recognises the commonality and complexity of the problem among all nations and shared responsibilities in cases of cross-border corruption activities. It has great potential, but major efforts are still needed for its effective implementation.
http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

⁵Compendium of International Legal Instruments on Corruption: <http://www.unodc.org/documents/corruption/corruption-compendium-en.pdf>

▶ EXECUTIVE SUMMARY

Many countries have recently enacted tough anti-corruption legislation to clamp down on bribery and corruption. The UK for example has enacted a more draconian anti-bribery law than the U.S. Foreign Corrupt Practices Act of 1977 (FCPA). South Africa, Brazil, China and Russia have also recently made important developments in enacting legislation to fight corruption, and India is in the process of bringing in a new law.

Companies need to be aware of the following:

- The extent of bribery and corruption in countries where they carry on business or at least have representatives of their business acting on their behalf.
- The risks of using third parties (e.g. agents, distributors, consultants, facilitators, market researchers, lobbyists, lawyers, etc).
- The obligation to report a corruption violation in some jurisdictions.
- The risks in dealing with government officials because legislation such as the FCPA specifically criminalises bribes paid to foreign public officials who are defined quite widely by the US authorities.
- The risks faced by Board members and senior officials of a business as a result of a failure to demonstrate that they have implemented adequate policies and procedures to prevent bribery and corruption.
- Within this publication we have summarised the bribery and corruption legislation in a number of jurisdictions where there is significant activity in the natural resources sector. The publication includes details of the risks of using third parties, dealing with government officials and the risks facing Board members and senior officials of a business.

▶ FORM AND SCOPE OF ANTI-BRIBERY AND ANTI-CORRUPTION LEGISLATIONS

UNITED KINGDOM (UK)

On 8 April 2010, the UK Bribery Act 2010⁶ (UK Act) was enacted. It came into force on 1 July 2011. It is one of the most sweeping anti-corruption laws promulgated in the last thirty years.

Corporations doing business in the UK should be aware that the UK Act applies to UK individuals and organisations, as well as to non-UK companies that have a business presence in the UK. The UK Act also applies to their operations anywhere in the world. - i.e. the UK Act gives the UK authorities jurisdiction over a non-UK company operating anywhere in the world if that company carries on part of its business in the UK. The UK Act imposes a strict liability offence on an individual or organisation for not preventing an act of bribery by an “associated person.” Corporations can be liable for the acts of their agents in addition to their joint venture partners and alliance partners.

The UK Act creates two general offences covering the offering,

- Promising or giving of an advantage, and
- Requesting, agreeing to receive or accepting an advantage. It also creates a discrete offence of the bribery of a foreign public official and a strict liability offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf.

The crucial defence is for an organisation to be able to demonstrate it has adequate procedures in place to prevent bribery.

Corporations and other business entities may be subject to an unlimited fine and officers, directors, stockholders, employees, and agents are subject to an unlimited fine and imprisonment of up to 10 years for violation of the UK Act.

Facilitation payments are outlawed - although somewhat confusingly the Guidance Notes to the UK Act note that the UK realises it cannot eradicate facilitation payments overnight and that multilateral action is needed to eradicate them across the globe.

UNITED STATES

The Foreign Corrupt Practices Act (FCPA)⁷ was enacted in 1977 and it generally prohibits US companies and citizens, foreign companies listed on a US stock exchange, or any person acting while in the United States, from corruptly paying or offering to pay, directly or indirectly, money or anything of value to a foreign public official to obtain or retain business. The FCPA also requires any company, including foreign companies with securities traded on a US exchange or otherwise required to file periodic reports with the Securities and Exchange Commission (“SEC”), to keep books and records that accurately reflect business transactions and to maintain effective internal controls.

Corporations and other business entities may be subject to a fine of up to US\$2,000,000 and officers, directors, stockholders, employees, and agents are subject to a fine of up to US\$100,000 and imprisonment for up to five years for violation of the FCPA's anti-bribery provisions. Fines may actually be significantly higher under the Alternative Fines Act.

Civil actions may also be enforced and in an SEC enforcement action, the court may impose an additional fine or disgorgement of profits not to exceed the greater of the gross amount of the pecuniary gain to the defendant as a result of the violation, or a specified dollar limitation. The specified dollar limitations are based on the seriousness of the violation, and range from US\$5,000 to US\$100,000 for a natural person and from US\$50,000 to US\$500,000 for any other person.

It should be emphasised that in practice the US regulatory authorities, the Department of Justice (“DOJ”) and the SEC, have actively enforced the FCPA by using the books and records and disgorgement provisions to come to large financial settlements with companies which have either been suspected of corruption offences or which have self-reported suspected corruption offences to the authorities.

⁶<http://www.legislation.gov.uk/ukpga/2010/23/contents>

⁷<http://www.justice.gov/criminal/fraud/fcpa>

▶ FORM AND SCOPE OF ANTI-BRIBERY AND ANTI-CORRUPTION LEGISLATIONS

CANADA

The *Corruption of Foreign Public Officials Act (CFPOA)*⁸ was passed in 1999, more than 20 years after the US anti-corruption legislation. The CFPOA was written to ratify the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

The CFPOA prohibits giving or offering any advantage or benefit, directly or indirectly, of any kind to a “foreign public official” in order to obtain or retain an advantage “in the course of business”.

The CFPOA is a broad piece of legislation that applies to any business carried on in Canada or elsewhere for profit. Canada has jurisdiction when the offence is committed in whole or in part in Canada or there is a “real and substantial” link between the offence and Canada e.g. a Canadian corporation may be liable for the actions of an overseas subsidiary if there is a “real and substantial connection” between the offence that occurred overseas and the Canadian corporation, such as the Canadian corporation directing the subsidiary to make the illegal payments.

The Act provides for penalties of up to 5 years in prison or a fine (with no maximum).

RUSSIA

On 30 December 2008, the newly adopted Russian anti-corruption legislation (the “Anti-corruption Law”) was officially published. It came into force on 10 January 2009.

Pursuant to the Anti-Corruption Law any of the following actions will constitute corruption: abuse of official position, active or passive bribery (including commercial bribery), abuse of authority, and any other unlawful use of a person’s official function in violation of the legitimate interests of the state and society and in pursuit of corrupt personal or corporate objectives. In April 2010, the President of Russia also approved the Anti-Corruption Strategy 2010-2011, which included a paragraph on criminalising foreign bribery.

Bribes are divided into four categories under the Russian anti-corruption legislation:

- Simple (up to RUR 25,000)
- Substantial (from RUR 25,000 to RUR 150,000)
- Large (RUR 150,000 to RUR 1 million)
- Extremely large (over RUR 1 million).

The Russian Criminal Code provides severe criminal sanctions for bribery. The penalty for state officials receiving bribes is up to 15 years imprisonment. The penalty for the individual offering the bribe is up to 12 years imprisonment. The penalty for giving a commercial bribe can result in up to 6 years imprisonment, while receiving a commercial bribe can result in up to 12 years imprisonment.

On 4 May 2011 Russian President, Dmitry Medvedev, approved a bill to raise fines for bribery⁹. The bill raises fines for giving or taking bribes up to 100 times the amount of the bribe. The maximum fine is 500 million roubles which is approximately US\$ 18.3 million. This resulted in the OECD Working Group on Bribery accepting Russia as a member in May 2011, after a number of years of observer status - this is likely to have a significant impact on the effectiveness of anti-corruption legislation in Russia, as the OECD Working Group has powerful tools to review and criticise the anti-corruption efforts of member states.

⁸<http://www.justice.gc.ca/eng/dept-min/pub/cfpoa-lcape/index.html>

⁹<http://eng.kremlin.ru/news/2164>

▶ FORM AND SCOPE OF ANTI-BRIBERY AND ANTI-CORRUPTION LEGISLATIONS

SOUTH AFRICA

The Prevention and Combating of Corrupt Activities Act 2004 (Act No. 12 of 2004)¹⁰ of South Africa became law on 28 April 2004. The Act repeals and replaces the old corruption act of 1992. It outlaws the bribery of foreign public officials and creates a host of other more specific offences involving corrupt activities.

Amongst other requirements, it specifically provides for;

- The establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts.
- Places a duty on certain persons holding a position of authority to report certain corrupt transactions.
- Provides for extraterritorial jurisdiction in respect of the offence of corruption.

Depending on the nature of a violation, a Magistrate Court may impose a fine or imprisonment for a period not exceeding five years. A Regional Court has the power to impose a fine or imprisonment not exceeding 18 years and the High Court could impose a fine or imprisonment for life.

AUSTRALIA

Australia has a wide-ranging anti-corruption system. Corruption offences in Australia cover a very broad range of crimes, including bribery, embezzlement, nepotism and extortion. For this reason Australia's corruption offences are not contained in any single Act of Parliament. Instead, different types of corruption are dealt with in different pieces of State / Territory and federal legislation. At the federal level, for example:

- Domestic bribery and foreign bribery offences are contained in the Criminal Code Act 1995.
- Dealing in proceeds of crime is an offence under the Criminal Code Act 1995.
- Obstruction of justice is criminalised in the Crimes Act 1914.
- Offences for improperly dealing with public money are covered by the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997.
- Breach of duties as a director of a company are dealt with by the Corporations Act 2001.
- Division 70 of the Criminal Code Act 1995 creates the offence of bribing foreign public officials¹¹ (Section 70.2) and Commonwealth public officials (Section 141.1).

Individuals who are found guilty of bribing a foreign or Commonwealth public official will be liable to a maximum of 10 years imprisonment, a fine of A\$1,100,000, or both. Corporations found guilty of bribing a foreign or Commonwealth public official may be subject to even more onerous pecuniary penalties.

Under the new legislation the maximum penalty for a corporation will be the greater of the following:

- A\$11,000,000, or
- Three times the value of any benefit that the corporation has directly or indirectly obtained that is reasonably attributable to the conduct constituting the offence (including the conduct of any related corporation), or
- If the court cannot determine the value of that benefit, 10 per cent of the annual turnover of the corporation during the 12 months preceding the offence.

¹⁰<http://www.dac.gov.za/acts/Prevention%20and%20Combating%20of%20Corrupt%20Activities%20Act.pdf>

¹¹<http://www.oecd.org/dataoecd/40/36/2027148.pdf>

▶ EXAMPLES OF CORRUPT ACTIVITIES

Whilst traditionally bribes are paid in cash or by transfers to bank accounts in offshore jurisdictions¹², there are a variety of other ways of paying a bribe and other things that are covered under anti-bribery legislation. For example, usual and bona fide expenditure such as corporate hospitality and promotional expenses may be disguised as a bribe to gain a direct or indirect benefit for the bribe payer.

The items in the following list may be considered bribes under anti-corruption laws where there is an intention to influence the recipient's decision or to cause improper performance of the recipient's role. The key issue is really where an individual or somebody related to him benefits personally from the bribe. The list is by no means exhaustive.

- Travel arrangements for a spouse
- Luxurious Meals
- Luxurious gifts
- Expensive company promotional items
- Contributions to charity at the direction of an entity or public official
- Giving a job to a family/connected member of a public official or a private individual of an entity
- Granting a scholarship to the family/connected member of a private individual of an entity or a public official
- Tickets to sporting events.

It is relatively easy to see how any of the preceding list could occur in the natural resources sector, for example (again these examples are not the only ways in which companies may seek an unfair advantage):

- A bribe to an official to secure a contract which is premised on exploitative or unsafe working conditions
- An illicit payment to the custodian of a major national resource (such as forests) to obtain logging rights that deplete the resource base without renewing it
- A facilitation payment to secure a permit through agents
- A bribe to secure a privatisation contract for the provision of a basic service (such as water) that will raise its cost to a level beyond the reach of low-income groups
- Doing business with Heads of State who are considered to be politically exposed persons
- Disguising bribes as donations, entertainment or charitable social work
- Bribing public officials to win public contracts to circumvent regulations or speed up services.

Many anti-corruption laws do not have a de-minimis exception, so attention must be paid to any financial advantage offered, no matter how small. The "value" may depend on the economic circumstances that exist in the country in which the recipient of the bribe resides. In a country of limited means and resources, a seemingly minor offer, gesture or gift may be significant and violate the law.

¹²We should also note that bribes may also comprise breaches of anti money laundering legislation.

▶ COMPARISON TABLE

KEY POINTS	UK	USA	CANADA
Key legislation	Bribery Act 2010	Foreign Corrupt Practices Act of 1977 (FCPA)	Corruption of Foreign Public Officials Act, SC 1998, (CFPOA).
Civil or Criminal Enforcement	Both	Both	Criminal only
Extraterritorial jurisdiction	The UK Act is extra-territorial. It applies to the worldwide activities of UK individuals and to UK and non-UK organisations that carry on “a business, or part of a business, in any part of the United Kingdom”	The FCPA establishes jurisdiction over US nationals and US businesses and any company quoted with securities traded on a US stock exchange, for offences committed outside the United States	Jurisdiction would have to be established by the Supreme Court of Canada on a case by case basis
Reporting obligations	There are no such obligations but companies are encouraged to self report to the Serious Fraud Office	There is no obligation, but the authorities encourage self-reporting and penalties are considerably reduced if a company self reports	There is no obligation
Sanctions for Individuals	Unlimited fines and a maximum of 10 years imprisonment	Maximum sentence of 5 years imprisonment and fines of up to US\$250,000. Imprisonment of up to 20 years for wilful violations of Books and Records and Internal Control offences	Individuals are subject to imprisonment for up to five years upon conviction of bribery of a foreign public official
Sanctions for Corporations	Corporations face unlimited fines. But they can defend themselves against a strict liability claim by demonstrating that they had “adequate procedures” to prevent bribery	Fines of up to US\$2 million per violation. Corporations also face other sanctions such as debarment, disgorgement of profits, and imposition of corporate monitors whose job is to ensure the company implements adequate anti-bribery procedures	A convicted corporation is subject to a fine at the discretion of the court
Facilitation Payments (small payments to speed up a procedure)	No exemption under the Act	Permitted under very limited circumstances	The Act allows for facilitation payments under very limited circumstances

▶ COMPARISON TABLE

KEY POINTS	RUSSIA	SOUTH AFRICA	AUSTRALIA
Key legislation	Russian criminal and civil legislation. Articles 164, 184, 204 and 309 of the Criminal Code	Prevention and Combating of Corrupt Activities Act 2004 (Act No. 12 of 2004). (PRECCA)	Criminal Code Act 1995 and Criminal Code Amendment Act 1999 (Bribery of Foreign Public Officials)
Civil or Criminal Enforcement	Both	Both	Both
Extraterritorial jurisdiction	No provision on extraterritorial application of its anti-bribery provisions	PRECCA provides for extraterritorial jurisdiction for offences committed outside South Africa by South African nationals or person ordinarily resident in South Africa	The jurisdiction depends on whether the person is an Australian citizen; or the person is a resident of Australia; or the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory
Reporting obligations	There is no obligation	There is a duty to report known or suspected corrupt transactions involving an amount of R100,000 or more to any police official	There is no obligation
Sanctions for Individuals	In most severe cases imprisonment can be for a period of 12 years or fine dependent on the severity of crime	Imprisonment can be for life if sentenced by the High Court, 18 years by the Regional Court and 5 years by the Magistrate Court. A failure to report is an offence carrying a maximum sentence of 10 years imprisonment	The maximum penalty for committing the offence of bribery is ten years imprisonment or a fine of up to A\$66,000 or both
Sanctions for Corporations	The law is silent on corporate sanction	Corporations can be liable to a fine as may be decided by the High Court or Regional Court or Magistrate Court.	The penalty can be as high as A\$330,000. In certain circumstances the court may confiscate property which has been illegally obtained by a company.
Facilitation Payments (small payments to speed up a procedure)	No reference is made to facilitation payments	Not permitted	The Code does not allow for facilitation payments. However, under clause 70.4, it would be a defence if a facilitation payment was made, being a payment of a minor value. Note: no monetary value is mentioned in the legislation

▶ OTHER SIGNIFICANT JURISDICTIONS

CHINA

The Anti-Corruption efforts of China were very much focused on Chinese officials until February 2011 when the bribery of foreign officials was criminalised, bringing Chinese legislation much more in line with international practice and meaning that Chinese companies no longer have a competitive advantage in jurisdictions such as Africa where they have been accused of bribery to win contracts ahead of companies from countries that prohibited such corrupt payments. An offence committed by an official may be punishable by death, as demonstrated by the death sentences passed down to executives of the Chinese Ministry of Commerce following their convictions of bribery violations. Chinese bribery laws prohibit bribery of both state officials and private individuals.

Even though the Chinese government's focus has been on its own officials, foreign corporations presently conducting business in China should be aware of Chinese anti-corruption law. On 29 March 2010, ripples went through the international business community when four executives of Rio Tinto of Australia pleaded guilty to, among other things, taking bribes. The executives, including one who is an Australian national, were fined and sentenced to imprisonment of between seven and fourteen years.

On 25 February 2011, China adopted the Eighth Amendment to the Criminal Law ("Amendment"). This included an amendment to Article 164 of the Criminal Law, criminalising the bribery of officials of foreign governments or international public organisations in order to gain an illegitimate commercial benefit. The Amendment came into force on 1 May 2011.

BRAZIL

The Brazilian Penal Code of 1940 provides for the crime of corruption committed in whole or in part within Brazil. In 1998 the Penal Code was amended to criminalise bribery and corruption in international business transactions and bribery of foreign public officials.

“Resolutely punishing and effectively preventing corruption bear on popular support for the party and on its very survival, and is therefore a major political task the party must attend to at all times.”

HU JINTAO,
Chinese President,
in an address to the
17th National Congress¹³

¹³Reported in South China Morning Post, Hong Kong, 18 October 2007)

▶ EXAMPLES OF COMPANIES FINED FOR CORRUPT ACTIVITIES

BELOW WE SET OUT A NUMBER OF EXAMPLES OF INTERNATIONAL BRIBERY CASES REPORTED WHICH ARE RELEVANT TO THE SECTOR.

- In a major corruption scandal in relation to Bonny Island, Nigeria, the world's second largest oilfield services corporations, Kellogg Brown & Root LLC, KBR Inc and Halliburton Company agreed to settle US Department Of Justice and SEC enforcement actions relating to the award of US\$6 billion in Nigerian construction contracts between 1995 and 2004. The US\$579 million in combined criminal and civil penalties are the largest ever against a US company in an FCPA enforcement action and the second largest ever. The Italian company, ENI SpA and its former Dutch subsidiary Snamprogetti Netherlands BV also agreed to pay jointly US\$125 million to settle with the US prosecutors. Likewise, Technip, a Paris-based engineering and construction firm, agreed to pay US\$338 million.
- In the UK, M.W. Kellogg Ltd. (MWKL), a subsidiary of KBR Inc was ordered by the High Court to pay over £7 million in fines under the Proceeds of Crime Act after a probe by the Serious Fraud Office (SFO) into its involvement in the bribery scandal that involved its US parent company.
- The world's second largest oilfield services corporation, Halliburton, was fined for the bribery of Nigerian officials in order to secure oil and gas deals in Nigeria. Halliburton was forced to pay a fine of \$559 million.
- The World Bank blacklisted Canadian engineering group, Acres International, for a period of three years for corruption in a Bank-financed dam project in Lesotho. This followed its conviction on 17 September 2002, by the Lesotho High Court, of paying bribes to win contracts on a multi-billion dollar dam project. The company was fined US\$266,000.
- Resources Ltd. (Niko), a Canadian oil and natural gas company, pleaded guilty to a bribery charge in an agreed statement of facts filed with the Alberta Court of Queen's Bench on 24 June 2011. The company paid bribes to Bangladesh's state minister for energy and mineral resources, AKM Mosharraf Hossain, with a gift of a luxury vehicle, a trip to Calgary for the 2005 Gas and Oil Expo event, and for a trip to New York in the same year to visit family. The company was fined C\$8,260,000, plus an additional 15% Victim Fine Surcharge for a total fine of C\$9,499,000.
- In China, a Shanghai court sentenced Rio Tinto executives, to 10 years imprisonment for bribery and stealing commercial secrets in a court case brought against Rio Tinto. Executive, Stern Hu, was also fined 500,000 yuan (US\$73,239) and given 14 years imprisonment. He was accused of receiving about US\$9 million in the form of bribes. Ge Minqiang, another executive, received eight years imprisonment and a fine of 300,000 yuan (US\$43,943). Liu Caikui, the third executive, received seven years imprisonment and a fine of 400,000 yuan (US\$58,591).
- A US incorporated company, Baker Hughes Incorporated ("Baker Hughes") was fined for FCPA violations. In September 2000, Baker Hughes retained an agent in connection with its bid for a business opportunity in the Karachaganak oil project in Kazakhstan. Within weeks, the company won the Karachaganak tender, which led to approximately US\$220 million in gross revenues for the company. From May 2001 to November 2003, Baker Hughes made 27 commission payments totalling approximately US\$4.1 million to the agent. Baker Hughes and BHSI recorded these payments as "commissions", "fees" or "legal services", though no identifiable services were performed by the agent for the company. The company voluntarily disclosed these violations to the US Department Of Justice (DOJ) and entered into (1) a Deferred Prosecution Agreement with them and (2) a civil settlement with the SEC. In addition, Baker Hughes Services International ("BHSI"), a subsidiary of Baker Hughes with operations in Kazakhstan, entered into a plea agreement with the DOJ. The FCPA charges related to Baker Hughes' operations in six countries -- Kazakhstan, Russia, Uzbekistan, Indonesia, Nigeria, and Angola. In 2007, Baker Hughes agreed to pay US\$44.1 million¹⁴ by way of settlement, which at the time was the highest FCPA settlement amount.

¹⁴<http://www.steptoec.com/publications.html>

▶ FINAL COMMENTS

When operating overseas or exploring potential openings abroad natural resources companies need to make anti-bribery compliance a high priority requirement. Also, when conducting risk assessments for bribery and corruption, it is vital to consider the wide variety of cultural, legal, financial and accounting issues. In previous cases of corruption companies have often been victims of such complexities or have been implicated in corruption activities unwittingly by intermediaries.

The growth in the law-enforcement actions and the tightening of legislation around the world makes it imperative for companies to analyse their exposure to bribery and corruption activities and to implement strategies to control such risks. The key is to have the best understanding of the risks the company is exposed to and to adopt a risk based approach to establishing the controls to be put in place to address them.

APPENDICES



▶ ANNEX 1: TABLE OF ACRONYMS

CFPOA	Corruption of Foreign Public Officials Act (Canadian Law)
CPI	Corruption Perception Index
FCPA	Foreign Corrupt Practices Act (US Law)
OECD	Organisation for Economic Co-operation and Development (OECD)
PEP	Politically Exposed Person
SEC	Securities and Exchange Commission (US Regulator)
UNCAC	United Nations Convention on Corruption 2003 is an international legal instrument against corruption that came into force on 14 December 2005.

▶ ANNEX 2: REFERENCES

1. <http://www.business-anti-corruption.com/en/news/article/collective-action-against-corruption-1//89/>
2. World Bank Governance Institute <http://www.worldbank.org/wbi/governance>
3. OECD- Directorate for Financial and Enterprise Affairs <http://www.oecd.org>
4. Transparency International www.transparency.org
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