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## **Anti-Corruption and Other Code of Conduct Risks**

*Wendy Hallgren  
December 9, 2010*

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# Fluor's Code of Business Conduct and Ethics

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# Fluor's Code of Business Conduct and Ethics

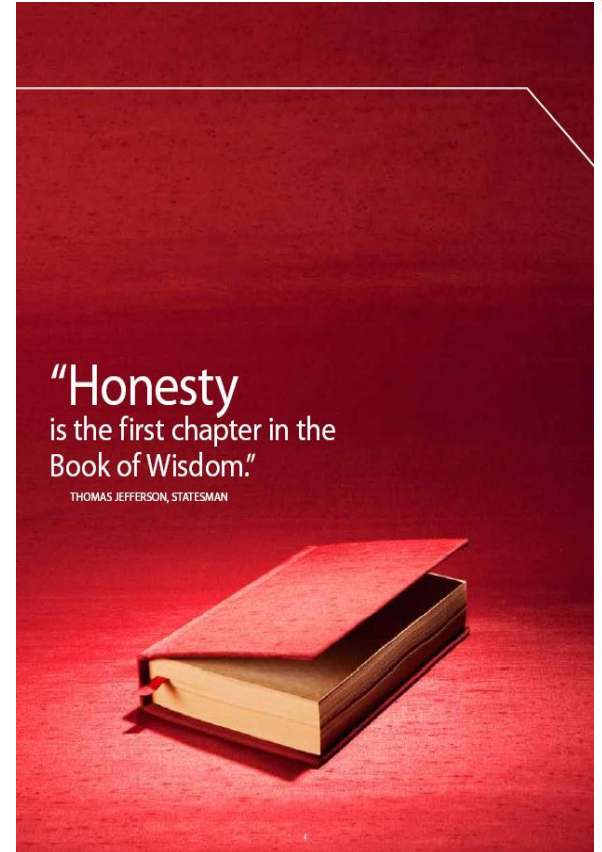
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- Centerpiece to Program
- Risk-Based
- Values vs. Rules
- Learning Aids
- Global vs. Local

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## REPUTATIONS ARE FRAGILE .....

*"It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently."*

*Warren Buffett,  
CEO, Berkshire Hathaway*



# Implementing Codes of Conduct: Imprimatur of the CEO

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## Tone From the Top

- “Only clean business is Siemens business. . . . **Compliance as part of corporate responsibility is our number one priority.**” Peter Löscher, Siemens AG CEO.
- “Statoil is willing to pay the short-term premium that may ensue from doing business the right way. **If there is a conflict, ethics has priority over cost, schedule, and a potential deal.** A persistent, resilient focus on ethical business conduct is critical to our existence and success.” Helge Lund, Statoil CEO.



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# Culture/Reputation of Ethics and Compliance as a Market Differentiator

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- ⌘ Marketing strategy
- ⌘ Pre-qualifications
- ⌘ RFP's
- ⌘ Part of sustainability strategy
- ⌘ Attract and retain top talent
- ⌘ Access to capital

# Top Five Reasons to Run a Business in an Ethical Manner

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Factor	Rank
Protection of brand and reputation	1
The right thing to do	2
Customer trust and loyalty	3
Investor Confidence	4
Public acceptance / recognition	5

*Source: Business Ethics Survey 2005 conducted by the American Management Association*

# What to Include?

## Considerations in Quantifying Risks

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### Likelihood

- **Fluor's Business Practices**
  - the way the company does business
    - business lines
    - types of contracts
    - subcontracting issues
    - joint ventures and teaming arrangements
    - geographic locations
    - approval processes/autonomy
  - new activities increasing risk
    - acquisitions
    - geographic expansion
    - product expansion
- **Fluor's Prior History**
  - prior violations
  - hotline calls
  - audit reports
  - internal investigations
- **Industry's Compliance Exposure**
  - peer companies addressing risk
  - trouble for other companies
- **Recent Regulation or Legislation**
- **Enforcement Trends**
  - actual cases
  - government announcements regarding priorities
- **Litigation Trends**
  - class actions
  - suits by competitors, clients, employees or shareholders
  - other private litigation
- **Press or Non-Governmental Organizations' Attention**  
( e.g., consumer groups, green groups and shareholder activists)

### Impact, If Did Occur

- **Severity of Penalties**
  - fines
  - civil penalties
  - punitive and treble damages
  - injunctive relief
  - suspension and debarment from government contracting
  - imprisonment for employees
- **Reputational Harm - may affect ability to:**
  - obtain contract awards
  - raise capital
  - obtain and retain employees
- **Fluor's Bottom Line**
  - lost revenues
  - increased costs
- **Shareholder Value**
  - impact on share price
- **Risk of Harm to Employees and/or Public**
  - potential severity of injuries
  - financial injury (e.g., price fixing and stock manipulation)

# Ethics and Compliance Risks to Engineering and Construction Industry

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- ⌘ Safe workplace
- ⌘ Treating employees fairly (harassment, union, forced labor, etc.)
- ⌘ Anti-corruption
- ⌘ Conflicts of interest, gifts, entertainment and business courtesies and fraud
- ⌘ Fair competition
- ⌘ Speaking up policy

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Speak up  
and make misconduct disappear.

unethical  
unethical  
unethical  
unethical  
ethical

Report unethical activity. It's the right thing to do. You may remain anonymous.  
[www.fluorhotline.com](http://www.fluorhotline.com)

1.800.223.1544 call toll free within the U.S. and Canada  
704.540.2248 call collect

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17-05-01-01-01

## FCPA – Anti-Bribery Prohibited Acts

### ⌘ It is unlawful for

- an issuer, domestic concern, or anyone acting within the jurisdiction of the United States
- with “corrupt intent”
- directly or indirectly
- to offer, pay, promise to pay, or authorize payment
- of “anything of value”
- to a “foreign official”
- for the purpose of obtaining or retaining business or securing any improper business advantage
- books and records provision - SEC registered or reporting issuers must maintain accurate books and records and implement adequate internal controls

# To Whom Do the FCPA Anti-Bribery Provisions Apply?

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- ⌘ Any “**issuer**” that files reports to the SEC or trades equity or debt on the U.S. exchange
  - Included any foreign company that trades, for example, American Depositary Receipts (ADRs), on a U.S. exchange.
  - Examples: Statoil, Novo Nordisk
- ⌘ Any “**domestic concern**”
  - Includes U.S. citizens, nations, and residents as well as any entity (corporation, partnership, etc.) that is organized under the laws of the United States or a U.S. territory of that has its principal place of business in the United States
  - Examples: Bourke, Omega Advisors
- ⌘ Any “**person**” including an organization, wherever located, that, while in the territory of the United States, does any act in furtherance of the prohibited conduct
  - Government argues minimum contacts include emails, telephone calls, and transfers through correspondent bank accounts in the U.S. intermediary banks
  - Examples: Seimens, KBR, Sapsizian

# Are There Any Exceptions?

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- ⌘ The FCPA permits “facilitating payments”
  - Purpose of payment must be to expedite or secure performance of “routine governmental action” by a foreign official
    - *Action must be “ordinarily and commonly performed” by the foreign official (for example, stamping passports)*
    - *Does not include decision by foreign official whether, or on what terms, to award new business to or to continue business with a particular party*
- ⌘ BUT *many companies no longer allow these types of payments*
- ⌘ AND *UK Anti-bribery law does not allow*
- ⌘ AND *facilitating payments are rarely permitted under local laws*

# “Affirmative Defenses” Under the FCPA

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## ⌘ Promotional payments

- “Reasonable and bona fide” expenses
  - Promotion, demonstration, explanation of products
  - Execution or performance of contract
- Proper documentation of expenditures

## ⌘ “Lawful” under local law statutes

- Has never been recognized as a defense to a payment prohibited by the FCPA
- Argues and rejected in Bourke
- Law must be a written statute

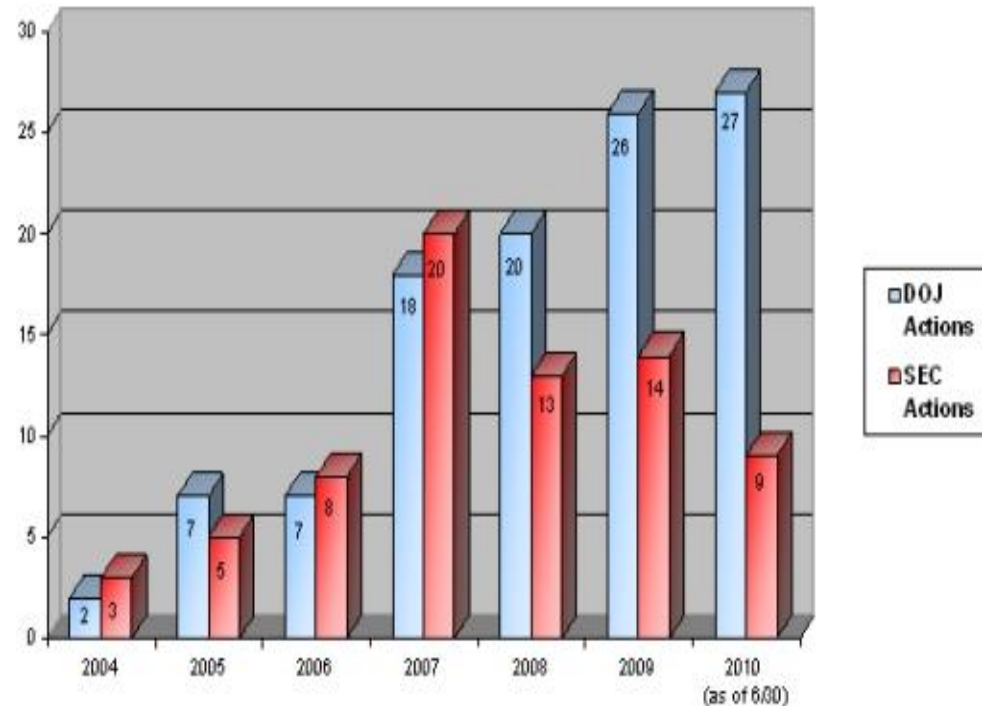
## ⌘ Broader than FCPA

- Applicability – more extraterritorial  
(e.g. could catch any US company with any business in the UK making facilitation payments in Indonesia)
- Prohibits receiving bribes
- Prohibits commercial bribes
- Prohibits facilitation payments (no exception)
- No Safe Harbor for bona fide expenditures (excessive)
- No discretion on imposition of public procurement ban

⌘ Competitors/companies in our industries paying huge fines, employees going to prison, and companies being debarred from government contracts: e.g.

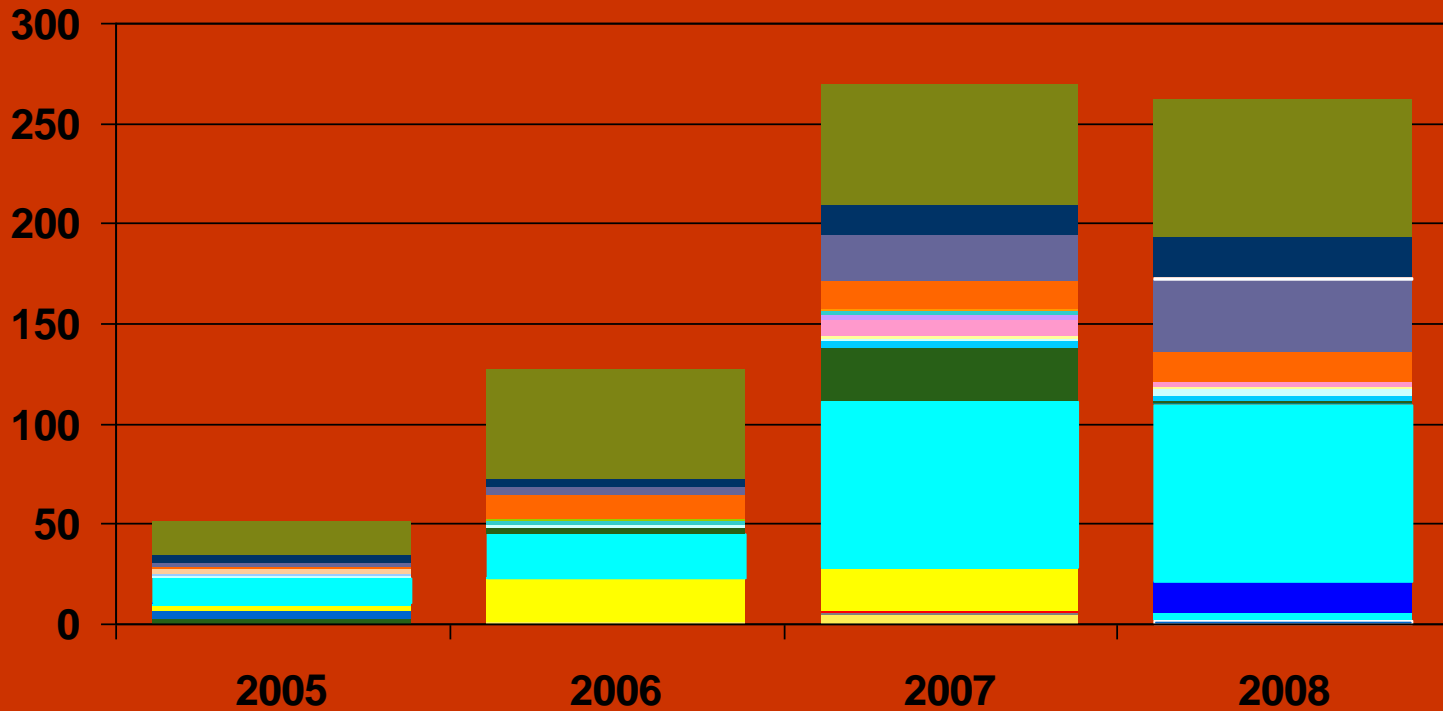
- **Siemens:** \$1.34 Billion in fines plus over \$1 Billion in legal and accounting fees...
- **KBR:** \$579 million in fines plus employees imprisoned...
- **BAE Systems:** \$400 Million in fines...
- **Technip:** \$338 Million in fines...
- **Pride International, ENSCO, Shell, Schlumberger, Panalpina:** \$236 Million in fines...
- Former executive of engineering company sentenced to 87 months prison plus fines...

## US Enforcement



# Foreign Bribery Investigations

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- Australia
- Austria
- Belgium
- Brazil
- Canada
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Korea
- Mexico
- Netherlands
- New Zealand
- Norway
- Portugal
- Spain
- Sweden
- Switzerland
- Turkey
- UK
- US

# Costs of Noncompliance: Monetary to Reputational

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## ⌘ Direct Costs to Company

- Settlements
- Criminal fine
- Prejudgment interest
- Disgorgement of profits/recovery or confiscation order
- Burden on the company (defense costs, executive time, lost resources)
- Asset forfeiture
- Appointment of compliance monitor

## ⌘ Collateral Costs

- Lawsuit by parties harmed by misconduct
- Derivative lawsuit by shareholders
- Class action lawsuits by investor
- Tax law implications regarding improper payments

## ⌘ Costs to Continuing Business

- Ineligibility for necessary licenses or permits
- Ban/debarment from doing business with governmental entities
- Suspension or debarment from agency/world/bank/UN/IMF activities

## ⌘ Reputational and Market Costs

- Loss of reputation or goodwill
- Negative effect on stock price
- Impact on mergers and acquisitions

# FCPA – New Rewards for Whistleblowers

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- ⌘ Whistleblower Incentives in Dodd-Frank Act 2010
  - 10-30% bounty (similar to *qui tams* actions regarding US government contracts) for whistleblowers to the SEC when penalties exceed \$1million USD
  - Increased protections
  - Attorneys fees paid
  - Essentially a whistleblower bounty program
  - Undermines internal reporting channels
  - After Dodd-Frank, SEC getting at least one FCPA tip a day

- ⌘ Increases Risk for Multinational Corporations



# Bribery of Public Officials By Sector 2008

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Industrial Sector	Score 2008	Standard Deviation	Confidence Interval 95%	
			Lower Bound	Upper Bound
Public works contracts & construction	5,2	3,29	4,9	5,5
Real estate & property development	5,7	3,08	5,4	6,0
Oil & gas	5,9	3,18	5,5	6,2
Heavy manufacturing	6,0	2,93	5,7	6,3
Mining	6,0	3,13	5,4	6,5
Pharmaceutical & medical care	6,2	3,16	5,9	6,5
Utilities	6,3	3,06	6,1	6,6
Civilian aerospace	6,4	3,13	5,8	7,0
Power generation & transmission	6,4	3,03	6,0	6,7
Forestry	6,5	3,19	5,8	7,1
Telecommunications & equipment	6,6	2,74	6,4	6,8
Transportation & storage	6,6	2,91	6,4	6,7
Arms & defence	6,7	3,31	6,0	7,3
Hotels, restaurant & leisure	6,7	2,85	6,4	7,0
Agriculture	6,9	2,91	6,6	7,2
Light manufacturing	6,9	2,69	6,7	7,1
Information technology (computers & software)	7,0	2,75	6,8	7,2
Banking & finance	7,1	2,77	7,0	7,3
Fisheries	7,1	3,07	6,4	7,7

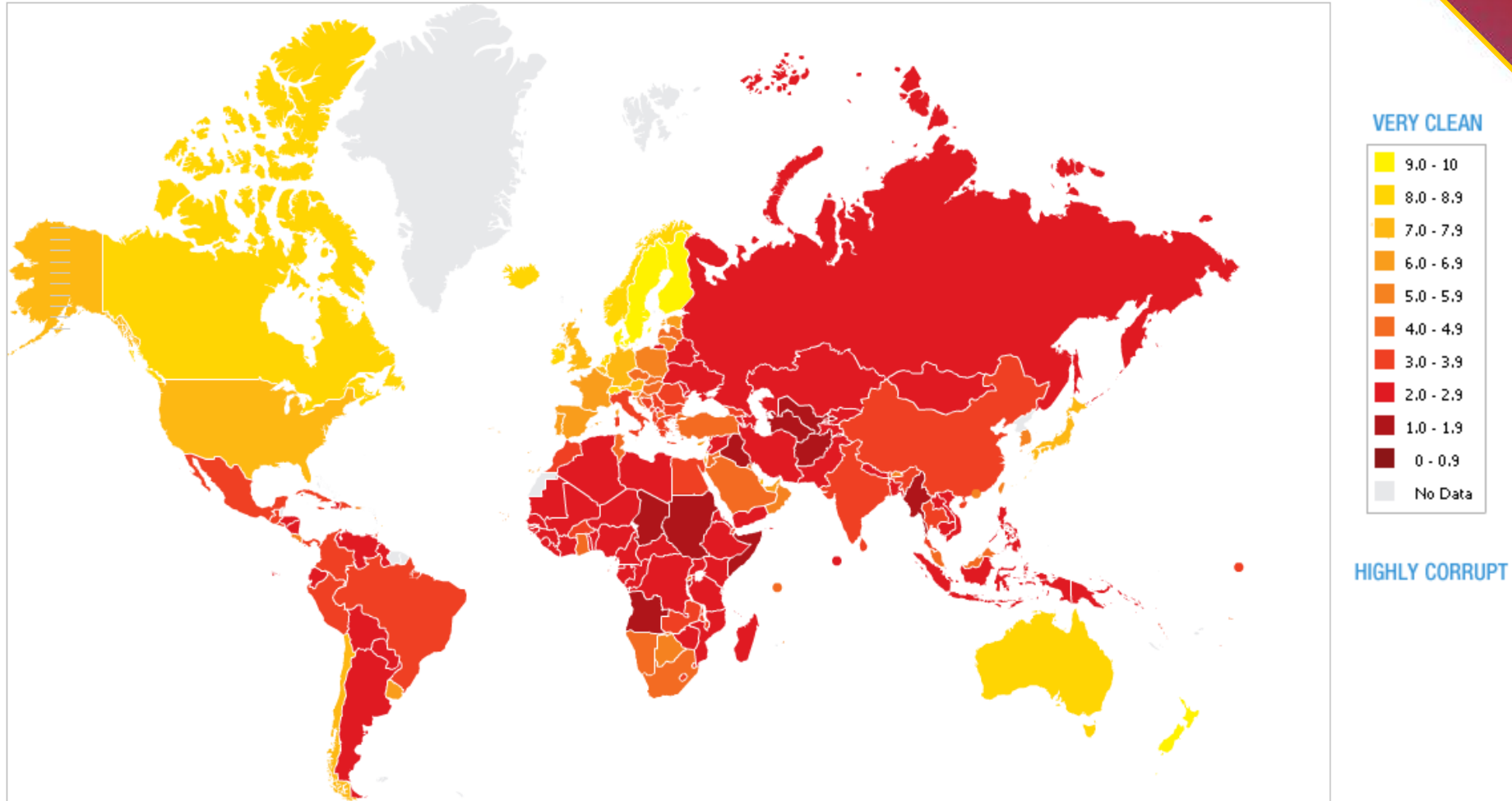
Source: Transparency International Bribe Payers Survey 2008.

Possible scores range from 0 to 10, with 0 representing the view that 'bribes are almost always paid' and 10 that 'bribes are never paid' by a sector.

For number of observations see Appendix one.

# Corruption Perceptions Index 2010 Results

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## VISUALISING THE CORRUPTION PERCEPTIONS INDEX

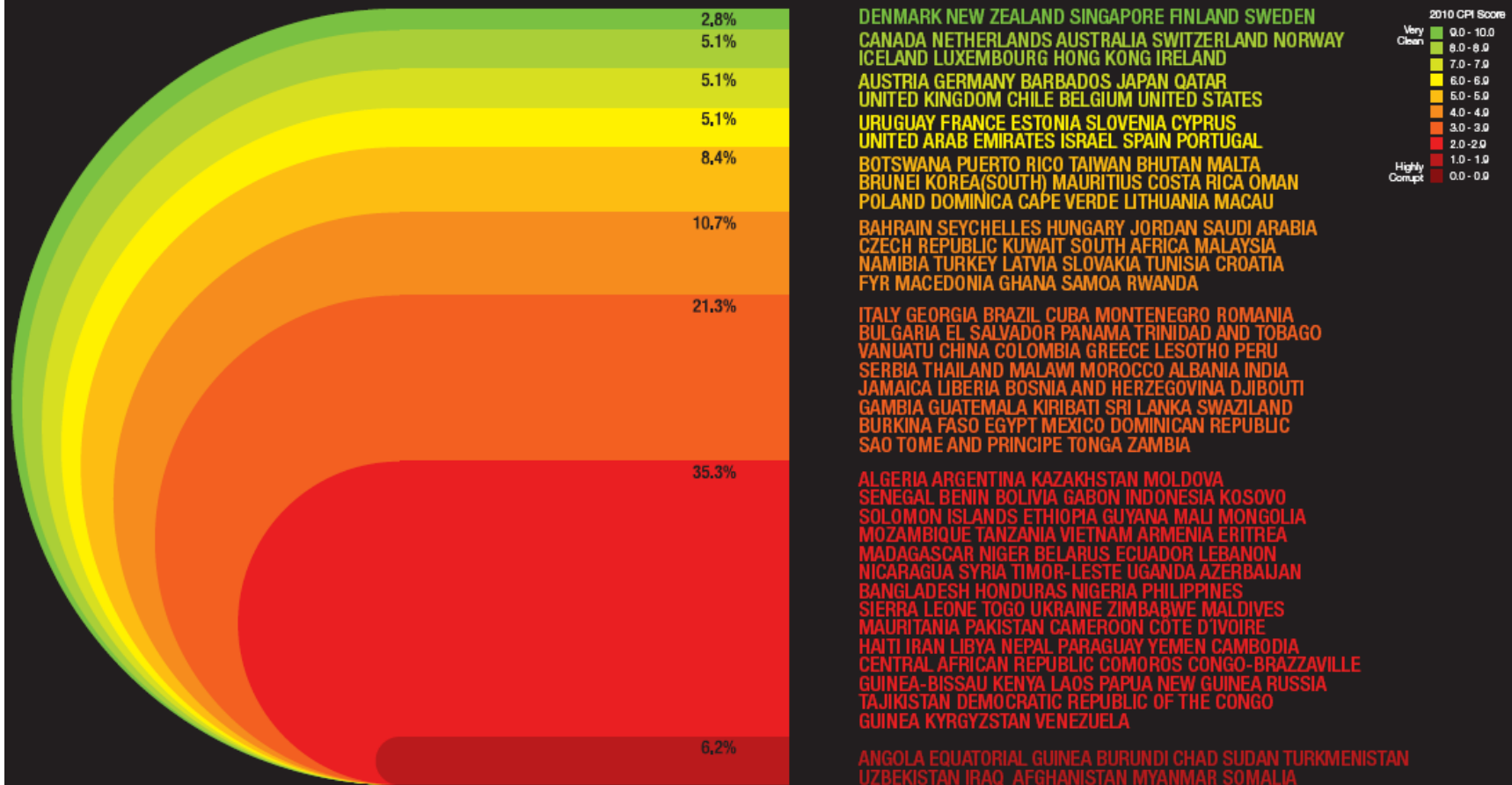
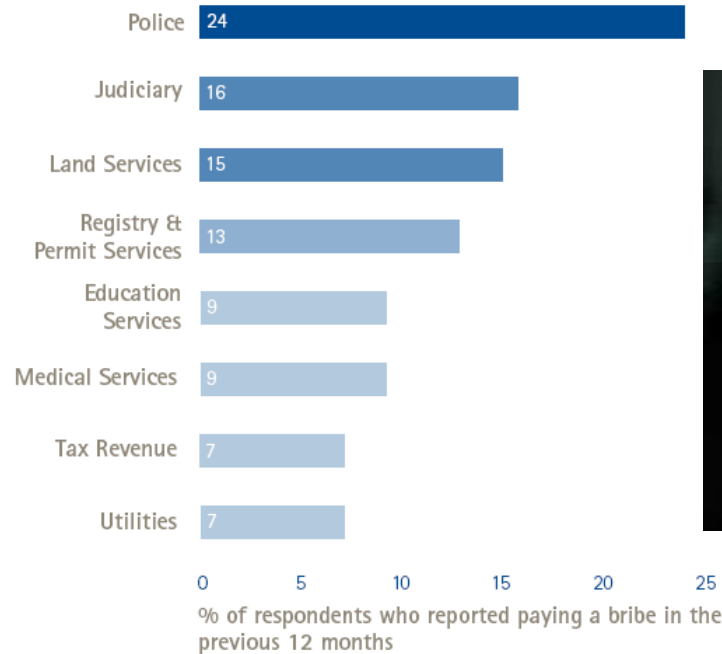


Figure 5 PERCENTAGE OF PEOPLE WHO REPORTED PAYING BRIBES IN THE PREVIOUS 12 MONTHS, BY SERVICE



Source: Transparency International Global Corruption Barometer 2009.  
Percentages are weighted and calculated for respondents who came in contact with the services listed. Colours indicate that there is a statistical difference between services.

# Anti-Corruption Enforcement Trends

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- Increased regulatory capacity in the US

***“[C]ombating corruption [is] one of the highest priorities of DOJ...The targets of this enforcement effort are bribe payers of all stripes: large corporations and small companies; powerful CEOs and low-level sales agents; U.S. companies and foreign issuers; citizens and foreign nationals; direct payers and intermediaries”***

*DOJ Attorney General Holder, May 2010*

- Increased enforcement of own anti-corruption laws
- Increased international cooperation among anti-corruption regulators
- Use of related statutes (export control, false statements, money laundering, etc.)
- Increased individual prosecution
- Once investigation, focus on industries (pharmaceuticals, freight forwarders), and suspect jurisdictions (Nigeria)
- Focus on improper business advantage versus to “obtain or retain business”
- Books and records as a “catch all”
- Emphasis on third parties (freight forwarder)
- Facilitation payments exception narrowly interpreted

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- ⌘ Pre-qualifications, RFPs, MSAs, Export Bank and Developmental Bank Funding
- ⌘ Contract Terms and Conditions
- ⌘ Historically:
  - Compliance with laws
  - Sometimes quote FCPA
- ⌘ Changes:
  - Code of Conduct compliance
  - Anti-Corruption programs and training
  - Supply Chain compliance
  - Increased prohibition of facilitation payments
  - Not just termination if violate, but refund amounts paid

# Anti-Corruption Risk Areas for Engineering and Construction Companies

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## ⌘ Third parties

- Clients
  - State owned enterprises
  - Governmental departments
- Agents
- Supplier and Contractors
- Teaming Arrangements
- Local Content Requirements

## ⌘ Geographic

## ⌘ E&C companies interface with government officials:

- Permits
- Security
- Visas
- Customs
- Taxes
- Offset projects
- Requests for donations
- Client satisfaction

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Getting things right.

trust,  
integrity,  
honesty,  
courage,  
respect,  
transparency,  
accountability

### FLUOR'S BUSINESS CONDUCT AND ETHICS EXPECTATIONS FOR SUPPLIERS AND CONTRACTORS

Fluor has always had an absolute determination to do the right thing. In all of its dealings, Fluor is committed to unyielding integrity and the highest standard of business conduct. This commitment is integral to Fluor's continued success, and we believe it positively impacts our diverse and worldwide suppliers, contractors, customers, employees, and investors, and the communities where we do business.

All of our suppliers and contractors are expected to do what is necessary to understand and comply with the expectations outlined and, in turn, require their suppliers and sub-contractors to conform as well. Our mutual success and continuing business relationships depend on it. Fluor reserves the right to verify that a supplier or contractor's business operations meet these expectations. Failure to act in a manner consistent with these expectations

may impede our ability to do business together in the future.

Fluor expects our suppliers and contractors to maintain and enforce policies requiring adherence to lawful business practices that encompass our expectations. These expectations may occasionally be updated or amended. The most current version is available at [http://www.fluor.com/sustainability/ethics\\_compliance](http://www.fluor.com/sustainability/ethics_compliance). For questions, comments, or training support about our expectations, please contact your Fluor representative or Fluor's Chief Procurement Officer at [procurement@fluor.com](mailto:procurement@fluor.com). Also, suppliers and contractors can see how Fluor defines these expectations for our employees in our Code of Business Conduct and Ethics, available at [http://www.fluor.com/sustainability/ethics\\_compliance](http://www.fluor.com/sustainability/ethics_compliance).

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# Evaluating Effectiveness of Controls: Where to Start

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## Understand Existing Controls

- ⌘ Anti-corruption and related policies (e.g. T&E, AML, export, gifts)
- ⌘ Anti-corruption procedures
  - Due diligence
  - Monitoring
  - Recordkeeping
  - Certifications
- ⌘ Prior assessments or audits (if any) of anti-corruption program and financial controls

## Assess Business Practices And Related Risks

- ⌘ Target units or systems with history of control weaknesses or deficiencies
- ⌘ Focus on high-risk markets, acquisitions, third-party relationships, and conduct
- ⌘ Focus on government-facing or highly regulated segments
- ⌘ Consider how company handles foreign office budgets and payment of invoices
- ⌘ Understand your business

# Components of an “Effective” Anti-Corruption Compliance Program

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- ⌘ Compliance program components include:
  - Clearly articulated corporate policy and procedures
  - Consistent and comprehensive training
  - Oversight, monitoring and reporting system (e.g. hotline)
  - Disciplinary procedures to address violations
  - Due diligence and oversight of agents, business partners, vendors, joint ventures
  - Financial and accounting procedures to ensure internal controls, and accurate books, records, and accounts
  - Periodic review of compliance programs
  - Documentation of compliance efforts
  
- ⌘ Paper procedures, however, are not enough

“This is an issue we're absolutely passionate about. Corruption has a corrosive impact on market opportunities and the general business climate. It deters investment, curbs economic growth and sustainable development, distorts prices and undermines legal and judicial systems. Regrettably, this situation is endemic in many areas of the world. It is our responsibility and obligation to our stakeholders and the global community to do what we can to mitigate this challenge.”

Remarks by Alan Boeckmann  
ECOIA 2007 Annual Business Ethics &  
Compliance Conference  
Los Angeles – September 26, 2007

- ⌘ Live, web-based, simulations
- ⌘ Ethicana-feature film
- ⌘ Winning the contract and into field
- ⌘ 42 instances of corruption
- ⌘ Developed by engineering associations, educational institutes, development banks and companies



# Fluor's External Engagement

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- ⌘ Transparency International (TI)
- ⌘ Partnering Against Corruption Initiative (PACI)
- ⌘ UN Global Compact (GC)
- ⌘ RESIST (TI, PACI, GC and the International Chamber of Commerce [ICC])
- ⌘ Anti-Corruption Education Training (ACET) in conjunction with American Society of Civil Engineers, National Institute on Engineering Ethics, various development banks, NGO's and a number of our competitors.
- ⌘ Center of Engineering Leadership in Australia
- ⌘ International Finance Corporation of World Bank
- ⌘ Organisation for Economic Co-operation and Development (OECD)

## Red Flags that Warrant Further Investigation about Third Party

- ⌘ Involves “high risk” country known for corruption
- ⌘ Lacks experience with product, field, or industry or qualified staff
- ⌘ Inconsistencies or misrepresentations in the due diligence process
- ⌘ Reference check reveals flawed reputation
- ⌘ Objects to anti-corruption contractual provisions or certifications
- ⌘ Requests unusually high compensation
- ⌘ Requests payment upfront or increase in payment before completion of the project
- ⌘ Requests cash or bearer instruments
- ⌘ Requests payments in third countries or to third parties
- ⌘ Recommended by government official with discretionary authority
- ⌘ Close social, business or family ties to government official
- ⌘ Government official has ownership interest