
*Oil and gas
international fraud and
corruption*



Oil and gas international fraud

Matthew Fuller

PwC

Welcome

Agenda

- Introduction
- Global economic crime survey
- Legal implications and recent prosecutions
- Assessing and managing risks

Presenters

- Stanley Levitt PwC Consulting & Deals
- Daniel Kiselbach Miller Thomson LLP
- Lloyd Schoepp RCMP International Anti-Corruption Unit

Oil and gas international fraud

Stanley Levitt

PwC

Global economic crime
survey

Investigations and forensic services

Stan Levitt M.Com (Forensics),CA(SA),CFE

Fraud and the international community



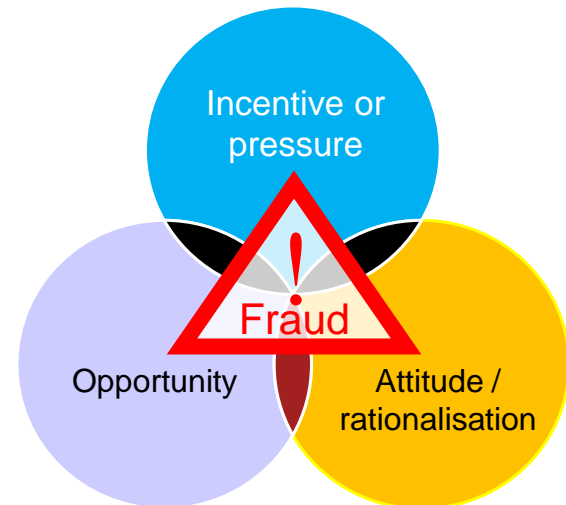
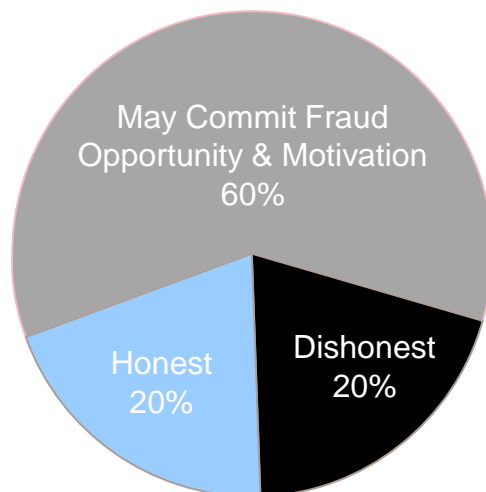
Agenda

- PwC's global economic crime survey
- Fraud, corruption and bribery
- Prevention: What can you do to mitigate?
- Schemes to consider
- Red flags
- Penalties
- Auditor vs. fraud investigator
- How PwC can help
- Conclusion



Fraud – a significant and growing threat

- In our survey of over 3,000 organizations in 54 countries, 30% of respondents were victims of economic crime in the previous 12 months
- In Canada, economic crime has risen to its highest level in the past 6 years
- 56% of Canadian organizations surveyed reported being victims of economic crime in the previous 12 months – a 10% increase from our 2003 survey



Economic fraud

Costs

- Average loss per organization from fraud was over US\$500,000
- Fallout from fraud is not simply the direct costs; collateral damage can also impact:
 - Staff morale/motivation
 - Reputation/brand image
 - Business relationships with customers, suppliers, regulatory bodies, etc.

Types

- Asset misappropriation (83%)
- Accounting fraud (31%)

The typical profile

- Male (88%)
- Age 31-40 (41%)
- High school education or less (79%)
- Has been with the company for 6 years or more (42%)



PwC's global economic crime survey

- Globally, 27% of respondents experiencing economic crime reported having experienced bribery and corruption cases in the last 12 months preceding the survey
- Bribery and corruption is a form of economic crime that has consistently increased in our past surveys
- Organizations may be reluctant to report due to increased media attention to high profile bribery cases

PwC's global economic crime survey cont.

With enforcement on the rise, countries around the world are:

- Criminalizing acts of corruption as signatories to international anti-corruption frameworks such as the UNCAC (United Nations Convention Against Corruption) and the OECD (Organization for Economic Co-operation and Development) Anti-bribery Convention
- Investigating and prosecuting individual executives, not just organizations
- Collaborating with other governments to prevent transnational corruption
- Creating effective legal systems for seizing, freezing and confiscating the assets or proceeds of a crime
- Developing transparency in government operations and public procurement, and establishing enforceable codes of conduct for government officials

PwC's global economic crime survey – Canada means of detecting fraud

Accident/internal or external tip-off	38%
Preventive fraud risk management activities	17%
Internal audit	14%
Electronic automated suspicious transaction reporting	10%
Whistleblower/hotline system	3%

Source – PricewaterhouseCoopers 2009 Global Economic Crime Survey

Oil and gas international fraud

Lloyd Schoepp

RCMP International Anti-Corruption Unit

Legal implications and
recent prosecutions

Oil and gas international fraud

Daniel Kiselbach

Miller Thomson LLP

Legal implications and
recent prosecutions



Commercial Crime Section International Anti-Corruption Teams

International Anti-Corruption Unit

“The way to combat corruption on a global scale is for countries to work together to create a level playing field”

Supt. Stephen FOSTER , Director RCMP Commercial Crime Branch

Cpl. Lloyd SCHOEPP Calgary Commercial Crime Section IACU





Commercial Crime Section International Anti-Corruption Teams

Overview

- Corruption: The Global Problem
- Global Response
- Canada's Response
- RCMP's Role





Commercial Crime Section International Anti-Corruption Teams

“Corruption isn’t a natural disaster: it is the cold, calculated theft of opportunity from the men, women and children who are least able to protect themselves.”

David Nussbaum, Former Transparency International Chief Executive Officer





Commercial Crime Section International Anti-Corruption Teams

What is Corruption?

- Behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.
- Includes
 - Bribery
 - Extortion
 - Influence peddling
 - Embezzlement of funds
 - Theft of corporate or public property

Transparency International (TI)



Royal Canadian Mounted Police
Gendarmerie royale du Canada

Canada



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Examples of Corruption

- Paying cash to a Public Official
- Using an AGENT to funnel bribes to the Public Official
- Hiring the Public Official's unqualified relative to get the contract
- Paying for the Public Official not to do their job
- Giving the Public Official extravagant gifts
- Paying for the Public Official's holidays
- **Red Flags – Joint Venture Agreements**





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International Corruption the problem...

- In some countries, bribery has been accepted as a necessary part of doing business
- In other countries, bribes were tax deductible business expenses – creating an uneven playing field for international businesses
- In some countries, the entire bureaucratic apparatus is controlled by corrupt politicians, which allows officials to “rubber-stamp” bribes

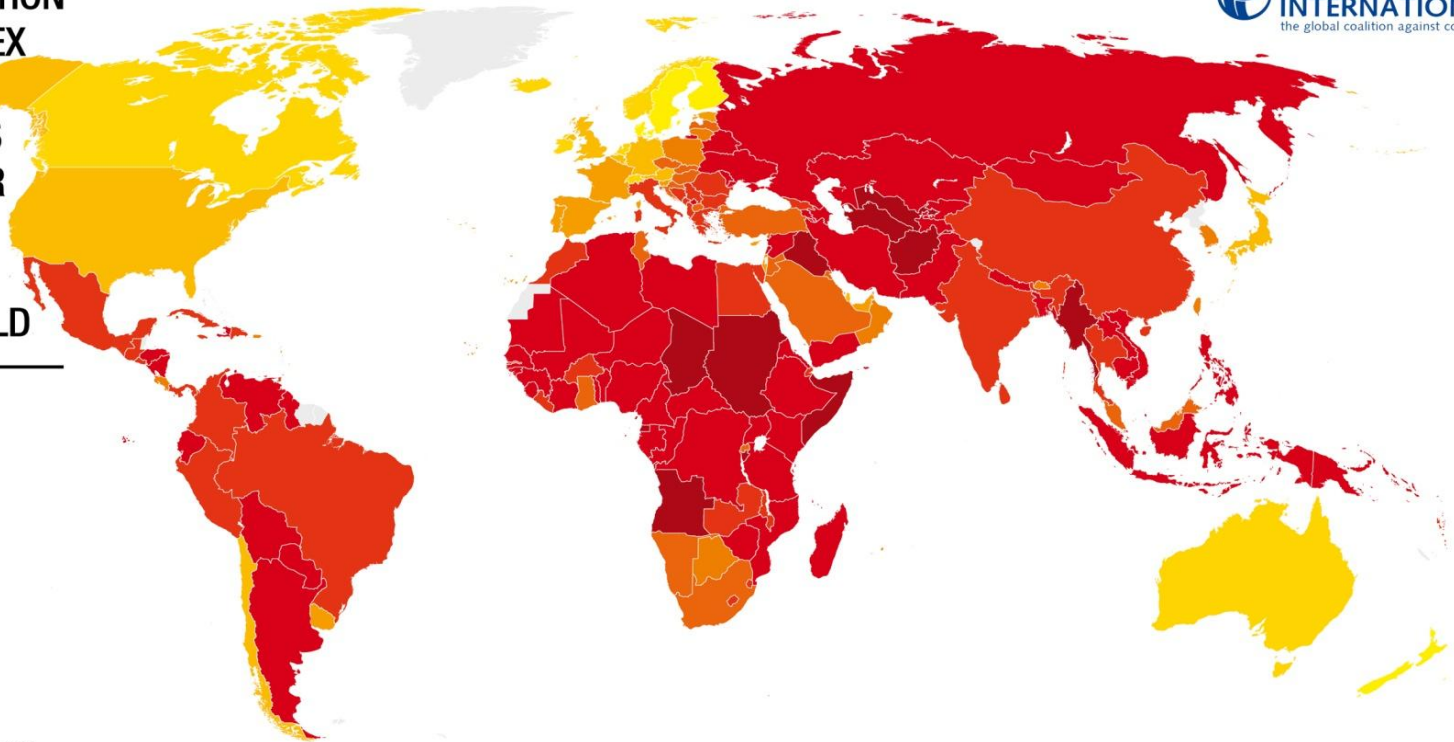
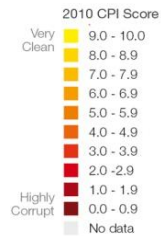




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International Corruption the problem...

THE 2010 CORRUPTION PERCEPTIONS INDEX MEASURES THE PERCEIVED LEVELS OF PUBLIC-SECTOR CORRUPTION IN 178 COUNTRIES AROUND THE WORLD



www.transparency.org

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Royal Canadian Mounted Police Gendarmerie royale du Canada





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Evolution of the Anti-Corruption Movement

- Watergate - FCPA
- May 1997, OECD addresses the bribery of foreign public officials.
- In 1999 Canada passed The Corruption of Foreign Public Officials Act (CFPOA) as a response to the OECD convention.
- In 2005 the United Nations Convention Against Corruption (UNCAC) was entered into force. Ratified by Canada on October 7, 2007. (RCMP teams formed)
 - MLAT requests can be completed under convention
 - Has extradition provisions
 - Facilitates recovery of proceeds derived from bribery of Foreign Public Officials





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Corruption of Foreign Public Officials Act

- Offence of Bribing a Foreign Public Official
- Is a serious (indictable) offence
- No statute of limitations
- Punishments
 - Persons: liable to imprisonment not exceeding five years
 - Corporations: fines only, unlimited





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Corruption of Foreign Public Officials Act

- Allows for facilitation payments. These are generally defined as:
 - Payments made to expedite or secure an act of a routine nature
 - It is part of the foreign public officials duties or functions
 - Should be small in monetary value, and infrequent
 - Should be documented
- **Seek legal advice**
- “As soon as you mark yourself as a company that’s willing to play along, the demands usually increase both in number and in value...Once you are in bed with these guys you lose control of the situation very quickly.”

Alexandra Wrage – Trace International





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Related Offences

- Laundering/Possession of Proceeds of Crime
- Fraud
- Securities Offences
- Secret Commissions
- Foreign Jurisdictions





Commercial Crime Section International Anti-Corruption Teams

Canadian Response - RCMP

- Creation of two seven person anti-corruption teams
- One team located in Calgary the other located in Ottawa





Commercial Crime Section International Anti-Corruption Teams

RCMP's role

- The International Anti-Corruption teams will deliver international anti-corruption services on four fronts:
 - Investigation
 - Prosecution
 - Prevention
 - Detection





Commercial Crime Section International Anti-Corruption Teams

Investigations

- Allegations that a Canadian person/business has bribed a foreign public official
- Allegations that a foreign person has bribed a Canadian public official that may have international repercussions
- Allegations that a foreign official has secreted or laundered money in, or through, Canada
- Requests for International Assistance





Commercial Crime Section International Anti-Corruption Teams

Recent Investigations



THE WALL STREET JOURNAL
REUTERS

SEPTEMBER 2, 2011, 5:01 PM ET

Mounties Raid SNC-Lavalin In Corruption Probe

By Samuel Rubinfeld and Joe Palazzolo

Canadian authorities raided the offices of SNC-Lavalin Group Inc. outside Toronto on Thursday in connection with a corruption probe into the engineering giant's work on a World Bank-funded bridge project in Bangladesh.

A spokesman for the Royal Canadian Mounted Police confirmed the raids in an interview Friday but declined to comment further.

"It's part of an ongoing investigation and no charges have been laid to date," said Constable Julie Moret.

Without mentioning the Padma project, Leslie Quinton, an SNC-Lavalin vice president of global communications, said it was "assisting the RCMP in their investigation on a specific case in which they requested our collaboration."

"We are complying fully with their requests and are not aware of any reason that would warrant such an investigation," she said. "Because the situation is under investigation, we cannot comment any further."

A World Bank spokesman said RCMP executed search warrants in "several locations" following a referral by the Bank's anti-graft unit, which is investigating allegations of corruption in the bidding processes for the Padma Bridge Project in Bangladesh.

The World Bank signed a deal in April to lend \$1.2 billion to Bangladesh to build the four-mile bridge over the river Padma. The bridge will link Bangladesh's underdeveloped south with the capital, Dhaka, and the country's main port, Chittagong. Once completed, it would be the largest bridge in the country.

"We have been informed that the Royal Canadian Mounted Police is investigating employees of SNC-Lavalin for violations of Canadian law," the World Bank spokesman said. "We commend the Royal Canadian Mounted Police for its robust response to the World Bank referral and look forward to the outcome of its investigation."

He added that the \$1.2 billion had not been dispersed for the project.

The World Bank is leading a consortium including the Japanese government, the Asian Development Bank and the Islamic Development Bank that agreed last year to provide Bangladesh up to \$2.9 billion for the bridge.

The raid by the RCMP is the latest indication Canada is more aggressively pursuing allegations of corruption abroad by its companies. The case is the second this year involving Bangladesh.



Pierre Duhaime, president and chief executive of SNC-Lavalin Group Inc.



Print

Niko Resources pleads guilty to Bangladeshi bribe; agrees to \$9.5M fine

By Lauren Krugel, The Canadian Press | June 24, 2011
CALGARY - Oil and gas company Niko Resources Ltd. agreed Friday to nearly \$9.5 million as punishment for bribing a Bangladeshi government 2005 — a crime the judge presiding over the case called a "dark stain" o heart of Canada's oilpatch.

"It is an insult to its shareholders and it besmirches the reputation of that Canadian corporation. It tarnishes the reputation of Alberta, and of Cana an embarrassment to all Canadians," Justice Scott Brooker said as he u plea deal between Niko and the Crown.

"The fact that a Calgary-headquartered oil and gas company bribed a fo government official is a dark stain on Calgary's proud reputation as an er capital of Canada."

According to an agreed statement of facts, Niko provided goods and sen induce officials to use their position to influence any acts or decisions" of Bangladeshi government.

"What happened was wrong. We acknowledge this. We accept responsil and we appreciate the seriousness of the actions," said Niko chief execu officer Ed Sampson in a statement.

The bribes date back to the spring of 2005, when bad press was heaped (TSX:NKO) for a January explosion at a northeastern Bangladesh natura field.

In May of that year, Niko's Bangladeshi subsidiary provided use of a Toy Cruiser worth \$190,984 to the Bangladeshi state minister for energy and resources, AKM Mosharraf Hossain.

The following month, Niko also gave Hossain \$5,000 in various travel pe paid for Hossain's accommodations in Calgary, where he was attending energy conference as the Canadian company's guest. Niko also paid for to fly to New York, where he was to visit family.

Hossain quit his post on June 18, 2005, as corruption allegations hit the Bangladeshi press.



RCMP raid Calgary miner over bribery allegations

greg mearthur
From Monday's Globe and Mail
Published Monday, Aug. 29, 2011 3:00AM EDT
Last updated Monday, Aug. 29, 2011 11:02AM EDT

The RCMP has raided the office of a Canadian mining company in Calgary alleging in an affidavit that the company funnelled bribes into the personal bank account of a small-town Mexican mayor to ensure protection from anti-mining protesters.

On July 20, a team of Mounties executed a search warrant on the office of Blackfire Exploration Ltd., a privately owned junior whose operations in the southern Mexican state of Chiapas have been embattled since 2009, when a vocal opponent of its barite mine was murdered in a drive-by shooting.

The company has not been charged with a crime and says it is co-operating fully with the RCMP investigation, which is part of a broader effort by the Mounties to enforce Canada's Corruption of Foreign Public Officials Act — the law that forbids the payment of bribes abroad.

In a sworn statement in support of the search warrant application, Constable Terri Lynn Batycki alleges the company illegally paid a local mayor, Julio Cesar Velazquez Calderon, about \$19,300 (CAD) "to keep the peace and prevent local members of the community from taking up arms against the mine."

When the mayor's requests became more exorbitant and sleazy — including demands for airline tickets and a "sexual night" with one-time Playboy model Nurka Marcos — the company complained to the state government that they were being extorted, Constable Batycki alleges.

In a statement, Blackfire said it never knowingly paid bribes to anyone. The company, which began mining in Mexico in 2008, explained that it was under the impression that the thousands of dollars it transferred were for the benefit of the citizens of the small town of Chicomuselo, destined for its fair and other public works.

"When we became aware that funds were possibly used for other purposes, we took immediate steps to stop payments..." the statement said. "We expressed our deep concern that contributions intended for the public were not being used accordingly."

Relying on the company's banking records, which were obtained through judicially approved production orders, as well as documents from Mexico, Constable Batycki alleges that Blackfire's Mexican subsidiary regularly transferred payments, month-by-month, directly into Mayor Calderon's personal bank account.





Commercial Crime Section International Anti-Corruption Teams

Come and talk to us

- Canada does not have an official voluntary reporting program
- Incumbent on the Crown and Police to act reasonably and in the public interest



Oil and gas international fraud

Stanley Levitt

PwC

Assessing and managing
risks

Fraud vs. corruption vs. bribery

Fraud – “The **intentional** or deliberate act to **deprive** another of property or money, by guile, **deception** or other unfair means” - ACFE

Corruption - “The **misuse of entrusted power for private gain** encompassing a variety of issues, including bribery, conflicts of interests, extortion, embezzlement and fraud”

Bribery - “The offer, promise, **payment**, authorisation or giving, of anything of **value, to a foreign official**, for the corrupt purpose of **influencing** the foreign official, to obtain or retain any business or any other improper advantage“ - FCPA

Prevention: what can you do to mitigate?

- Anti-corruption compliance code, standards and procedures
- Accounting records
- Internal controls



Anti-corruption compliance code, standards and procedures

- Insert an anti-bribery provision into your company's Code of Ethics document
- Be clear: it is unlawful to make corrupt payments, or provide anything of value to a foreign public official, etc.
- Again, be clear, NO:
 - Monetary payments (whether from company funds or personal funds)
 - Gifts
 - Payments for services pursuant to contractual arrangements
 - "Favours"
 - Meals, entertainment and travel
 - Charitable donations
- If you have any doubts as to who qualifies as a government official, assume he/she is a government official and act accordingly

Accounting records

- Books and records must, in reasonable detail, accurately and fairly reflect transactions and disposition of assets
- All payments, even payments for improper purposes, must be recorded accurately
- All employees must understand the importance of keeping accurate books and records



Internal controls

Internal controls should be designed to ensure:

- Oversight over consultants or sales-related consulting contracts
- Contracts entered into with legal or compliance review
- An accounting process that makes it easy to tell who is receiving money, and how much
- Cash payments with clear, documented explanations



Schemes to consider

Potential scheme

Financial statements do not agree to the local country GL due to write-offs or missing funds

Invoices are purchased and therefore payee per the GL does not match invoices and payee per the check

Fixed assets are missing or there is an unusually high level of write-offs

There is a high volume of activity in the petty cash account

There are several disbursements just below the approval authority limits for a certain employee

Schemes to consider cont.

Potential scheme

Payments to agents are unusually high

There are payments to individuals not on the client's payroll or to agents that are not authorized agents

The travel and entertainment expense accounts include trips to conferences for non-employees or lavish accommodations, food and airfare

Payments for consulting or legal work are unusually high and the work is ill-defined

There are one or more expense accounts with unusual names

There are entries in the disbursements listing for "gifts"

Red flags for accounting

- Invoices lack detail or description does not match
- Consecutively numbered vendor invoices
- Vendor invoices with: no address for sending payment, no detail regarding items purchased, no sales tax where applicable, etc.
- Purchases from vendors not on approved lists
- Duplicate payments
- Significant or unusual changes in customers or suppliers
- Unusual methods of payment; requests payments to accounts in foreign countries known for bank secrecy laws



Penalties for non-compliance

- Remediation cost - legal and advisory
- Reputational damage
- Potential exclusion from government business
- Shareholder lawsuits
- Lawsuits brought by disadvantaged competitors



Auditor versus fraud investigator

The auditor = watchdog



The investigator = bloodhound



How PwC can help

Clients engage PwC to:

- Prevent fraud
 - Fraud risk assessment
 - Fraud awareness sessions
 - Internal control testing and assessment
- Detect and investigate fraud and other irregularities
 - Forensic investigation
 - Investigative analysis
 - Detailed and focused investigations and probes
 - Remediate from a fraud event

How PwC can help cont.

This will assist your organization to:

- Minimize possibility of intense government investigation, government sanctions and punitive damages
- Increase likelihood of favorable settlement
- Comply with local and international laws and regulations

Conclusion

Prevention is better than detection!



Questions

Thank you!

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