

Fraud and corruption on the African continent

SARA – International Mobility
Group

20 February 2019

AFRICA



OVERVIEW

🔪 Global anti-corruption enforcement

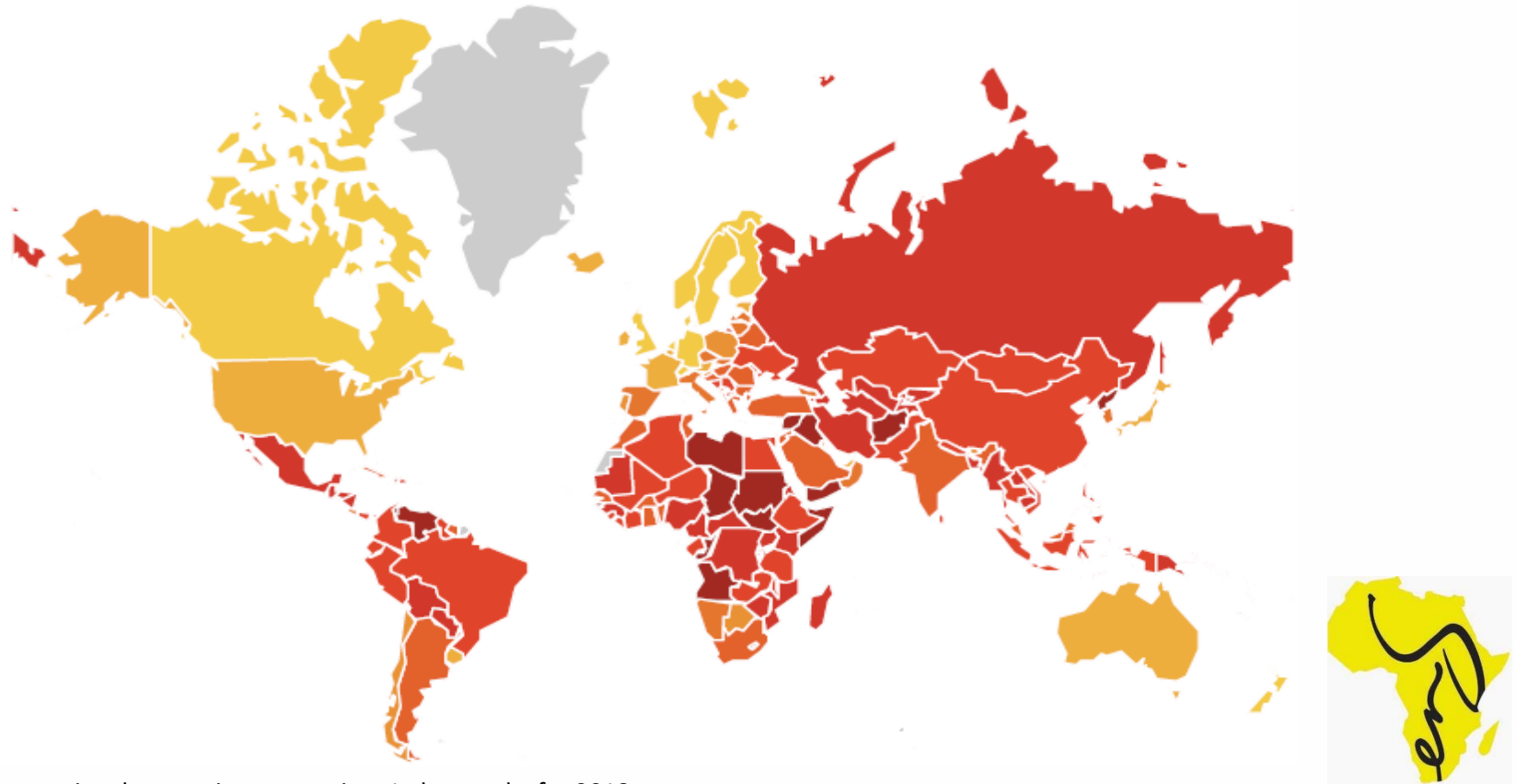
- Global overview
- Perceptions of corruption in Africa
- US Foreign Corrupt Practice Act (“FCPA”)
- UK Bribery Act (“UK BA”)

🔪 Practical bribery and corruption challenges

🔪 Fraud internal risk

🔪 Fraud external risk

GLOBAL ANTI-CORRUPTION ENFORCEMENT



GLOBAL ENFORCEMENT: TOP 10 IN AFRICA


| | Score | Rank |
|---------------------|-------|------|
| Seychelles | 66 | 28 |
| Botswana | 61 | 34 |
| Cabo Verde | 57 | 45 |
| Rwanda | 56 | 48 |
| Namibia | 53 | 52 |
| Mauritius | 51 | 56 |
| Sao Tome & Principe | 46 | 64 |
| Senegal | 45 | 67 |
| Tunisia | 43 | 73 |
| South Africa | 43 | 73 |

GLOBAL ENFORCEMENT: 11 WORST COUNTRIES

| | Score | Rank |
|-------------------|-------|------|
| Somalia | 10 | 180 |
| South Sudan | 13 | 178 |
| Syria | 13 | 178 |
| Yemen | 14 | 176 |
| North Korea | 14 | 176 |
| Sudan | 16 | 172 |
| Guinea Bissau | 16 | 172 |
| Equatorial Guinea | 16 | 172 |
| Afghanistan | 16 | 172 |
| Burundi | 17 | 170 |
| Libya | 17 | 170 |

- 7 of the 11 worst countries in the World are in Africa

GLOBAL ENFORCEMENT: CORRUPTION CHALLENGE

- ! High levels of bribe solicitation and extortion - bribes built into service & delivery costs
 - ! Frequent risk of “facilitation payments”
 - ! Risk of bribes paid by agents and intermediaries is high – “smoothing fees, miscellaneous, sundry costs”
 - ! Cash economies
 - ! Revenue and customs penalties are negotiable (especially in countries like the DRC)
 - ! Meetings with officials in Africa often come at a price
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GLOBAL ENFORCEMENT: NON-COMPLIANCE RISKS

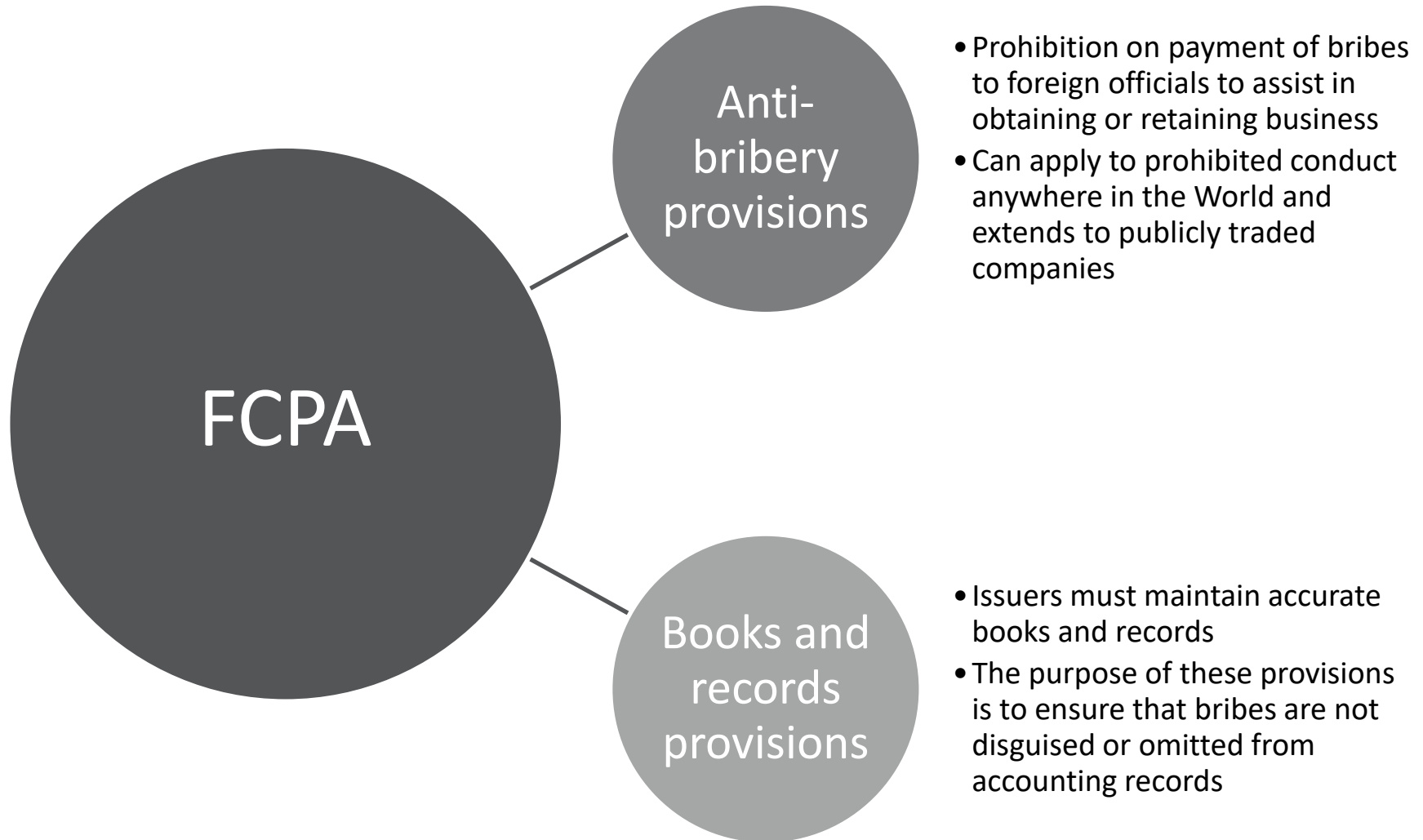
Reasons companies may avoid bribing:

- ✦ Fines are substantial
- ✦ Reputational harm
- ✦ Expensive legal fees
- ✦ Remediation fees
- ✦ Derivative action risk
- ✦ Appointment of a monitor
- ✦ Disbarment and profit disgorgement
- ✦ Director accountability, including imprisonment

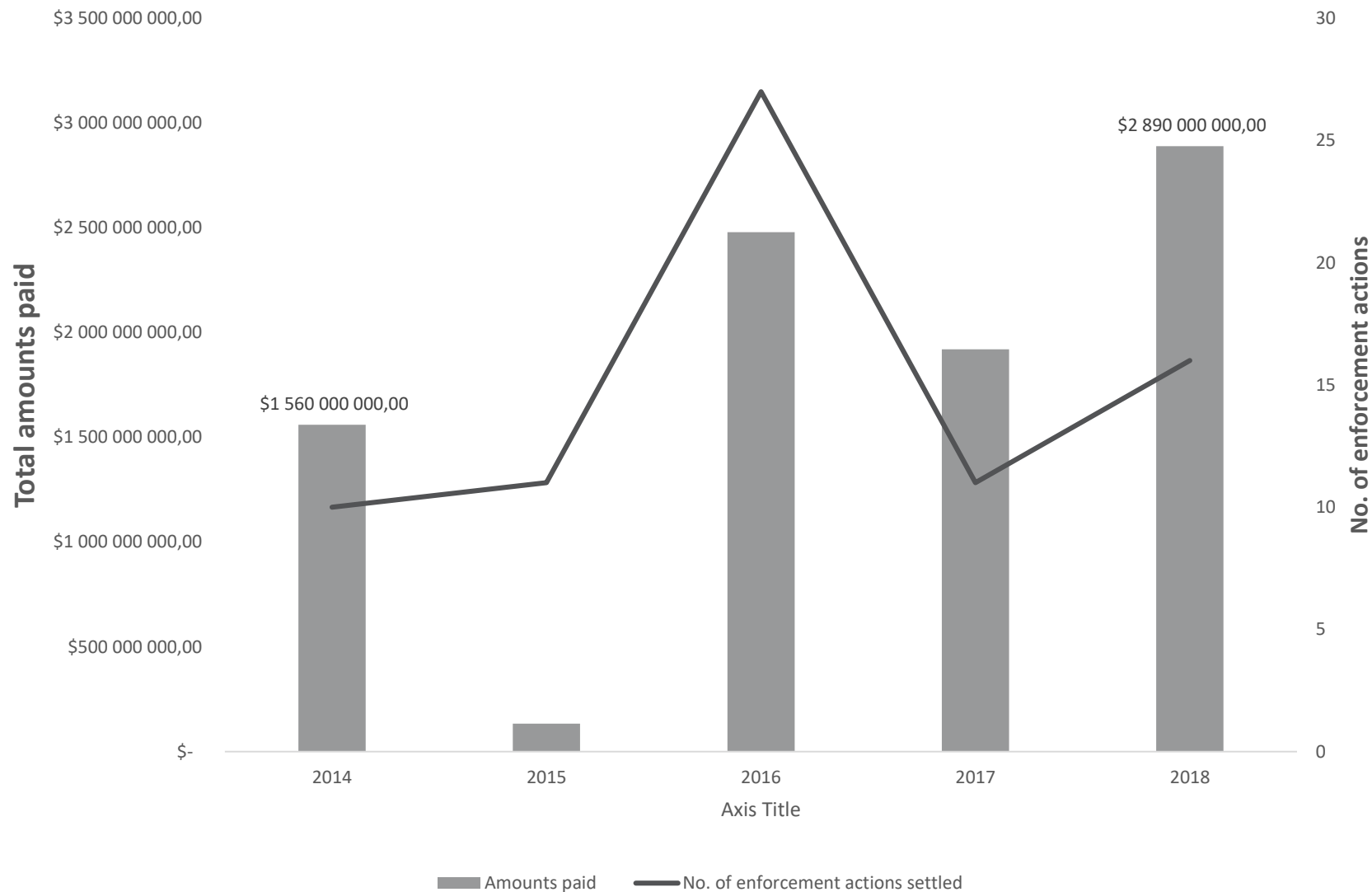


McKinsey
& Company

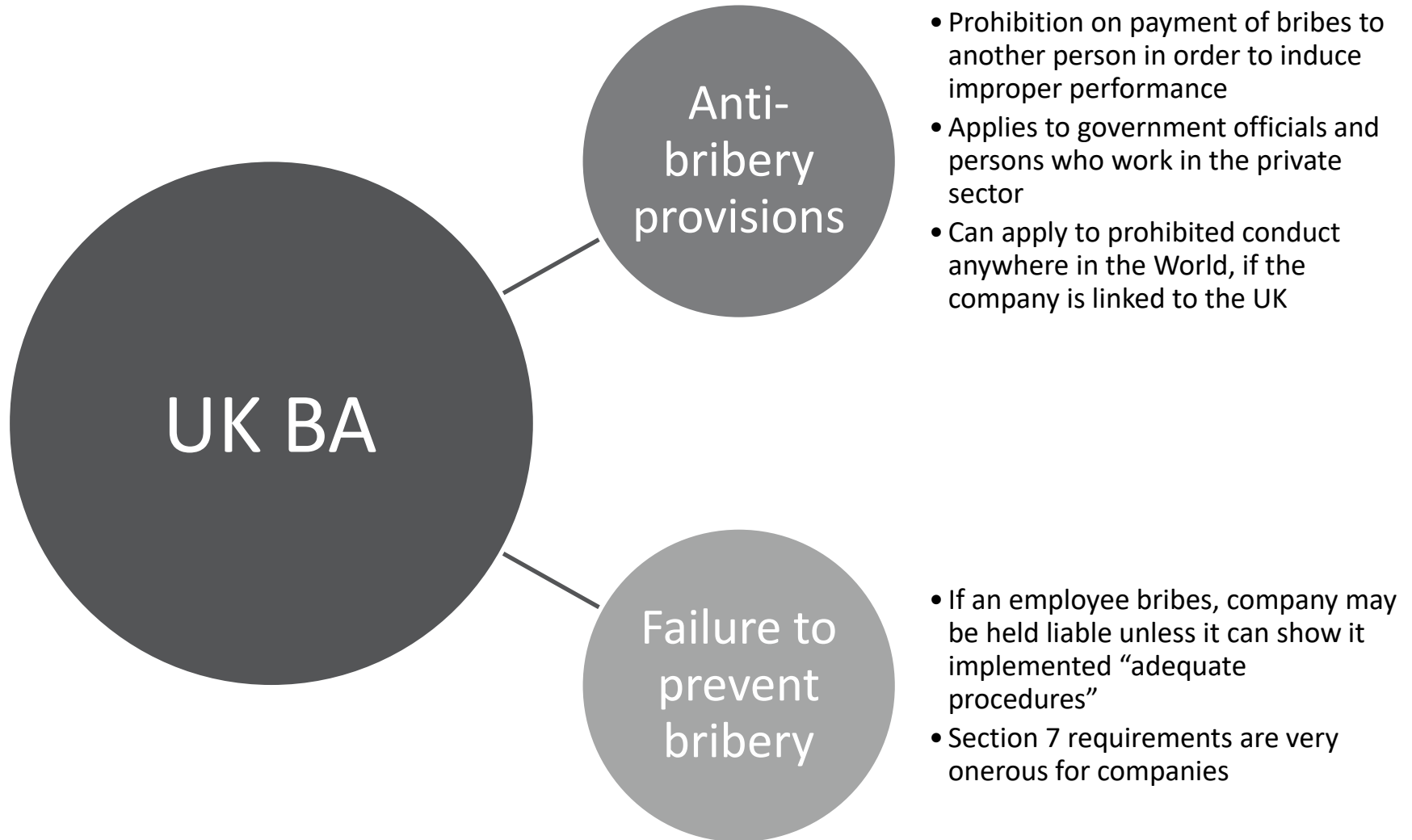
GLOBAL ENFORCEMENT: FCPA




GLOBAL ENFORCEMENT: FCPA



GLOBAL ENFORCEMENT: UK BA



GLOBAL ENFORCEMENT: UK BA

- ✔ The Serious Fraud Office (“**SFO**”) has become increasingly active
 - ✔ Recently appointed Lisa Osofsky, an ex-FBI lawyer as its new head
 - ✔ Clear drive to be more robust – e.g., Osofsky is actively recruiting a Head of Intelligence to help the SFO pro-actively source new cases
 - ✔ Important for UK expats to know that the UK BA applies to their conduct anywhere in the World
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PRACTICAL BRIBERY AND CORRUPTION CHALLENGES


Gifts and entertainment

- Traditionally bribes have been disguised as G&E
- Difficult to define what is lavish, what is reasonable
- Laws and guidelines may have strict requirements
- Due care should be taken to avoid contravening local laws



PRACTICAL BRIBERY AND CORRUPTION CHALLENGES

Facilitation payments

- Usually nominal cash payments to get an official to do his or her job
 - Whilst the current law in South Africa prohibits the nature of such payments, PRECCA amendments will expressly address facilitation payments
 - Globally the “life or limb” exception is recognised:
 - Being stopped by armed police or soldiers without a reasonable cause
 - Inoculations at a border crossing in an African country
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PRACTICAL BRIBERY AND CORRUPTION CHALLENGES

The use of third party agents

- Historically bribes have been paid through intermediaries
- Under the South African law, it does not matter if the corruption is perpetrated directly or indirectly – you will be liable
- Other legal systems similar – you can't outsource your corruption

wilfully blind



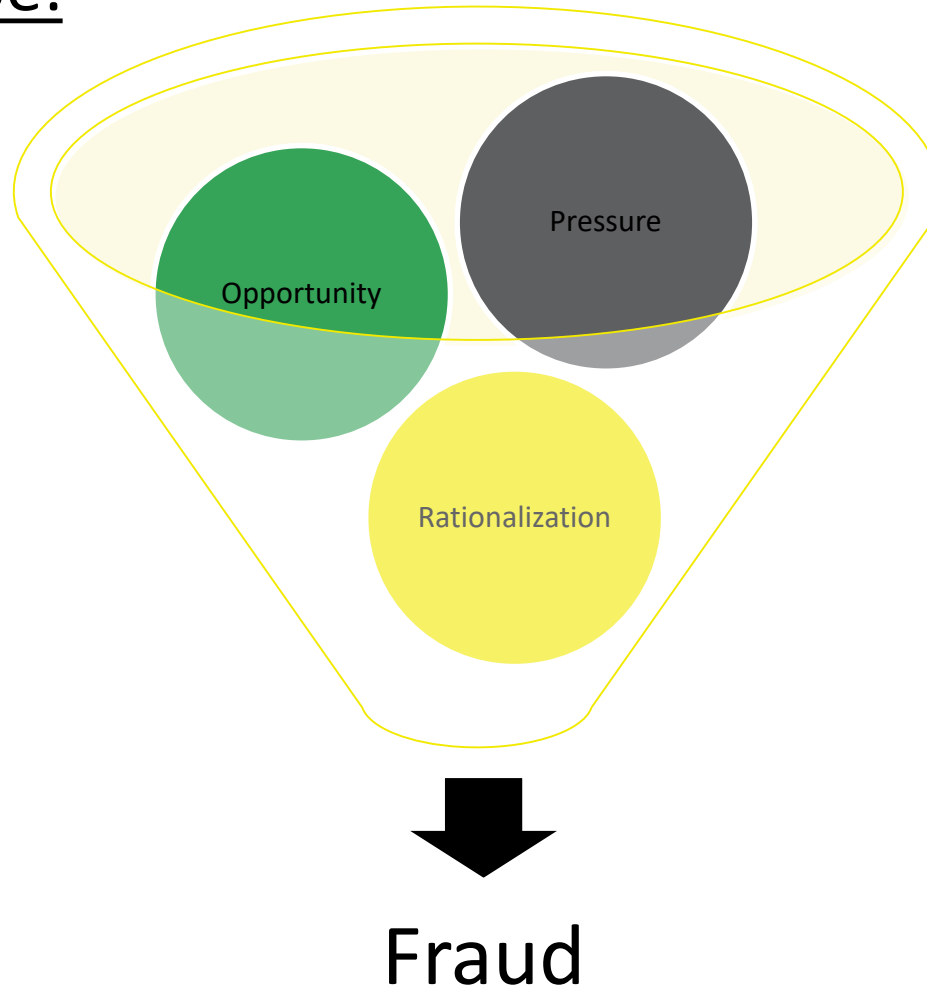
voluntarily ignorant

FRAUD RISKS



FRAUD – INTERNAL RISK

The fraud recipe:



FRAUD – INTERNAL RISK

Fraud pressure

- 🍂 Living beyond means
- 🍂 Lack of job security
- 🍂 Divorce
- 🍂 Extra-marital affairs
- 🍂 Medical emergency
- 🍂 Gambling alcohol or drug problems



FRAUD – INTERNAL RISK

Fraud opportunity

- Weak control environment
- Shared passwords
- Limited segregation of duties
- Poor management oversight
- Remote location
- High trust



FRAUD – INTERNAL RISK

Fraud rationalization

- “I was going to pay it back...”
- “The company makes huge profits but does not pay us enough...”
- “The company has retrenched a lot of staff...”
- “I should have been promoted long ago...”



FRAUD – EXTERNAL RISK


Fraud types

- Identity theft
- Ponzi schemes
- Phishing schemes
- Advanced-fee frauds
- Hacking based fraud
- Tax fraud
- Insurance fraud




FRAUD – EXTERNAL RISK

Case study 1: Housing fraud

- ✦ The client sold her house through an agent – corresponded with the conveyancer by email
 - ✦ After the sale, she noticed that the purchase price hadn't been paid into her account and she followed-up
 - ✦ The full amount had been paid into the account of a third party, and it turned out she had “emailed” the conveyancer and told them to pay into that account
 - ✦ After investigating further, her Yahoo email address had been compromised and the fraudster had pretended to be the seller in emails to the conveyancer
 - ✦ The case highlights the risks involved with remote engagement (especially through emails)
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FRAUD – EXTERNAL RISK

Case study 2: Puppy fraud

- ✦ The client was a foreign national living in South Africa – he was keen to purchase a rare breed puppy not usually available in SA
 - ✦ After getting a referral from someone at work, contacted a “breeder” and was delighted to find out they had a puppy readily available
 - ✦ Payment was made up-front – soon the fraudster realized that more money could be extracted under the guise of “insurance” and “transport costs” etc.
 - ✦ The puppy never arrived, and the client had parted with approximately \$5,000
 - ✦ The case highlights the risks of not being sensitized to the types of scams South Africans face on an ongoing basis
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KEY TAKEAWAYS

- ✦ Corruption is a challenge in Africa
- ✦ Be cautious with gift requests, facilitation payment issues, and third party agents
- ✦ Ensure internal controls do not allow opportunity for fraud
- ✦ For expats working in new countries, ensure that they are sensitized to risks – especially possible scams