



**Asia-Pacific  
Economic Cooperation**

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**2013/SOM3/ACT/WKSP/010**

## **Best Practice in Resisting Demands for Facilitation Payments**

Submitted by: Control Risks



**Workshop on Strengthening Integrity Through  
Public-Private Partnership: Preventing  
Facilitation Payment and Managing Gift Rules  
Medan, Indonesia  
24 June 2013**

## Best practice in resisting demands for facilitation payments

24 June 2013

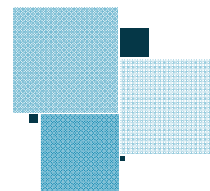
Corene Crossin, Managing Director South East Asia



Private and confidential

### ■ Agenda

1. What do laws say?
2. What are the challenges for businesses?
3. What can companies can do?



## Control Risks

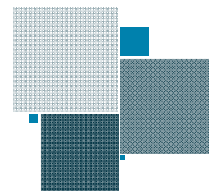
Legal context



## Control Risks

### ■ Bribery: 3 common legal elements

1. Offering, giving, granting, promising or accepting any payment, gift, promise, benefit, favour or **anything of value**, *directly or through a 3<sup>rd</sup> party*
2. To or from a **person or entity** (particularly public officials).
3. For the purpose of improperly securing a **business advantage**, or for the **improper performance** of a function or activity.



## Control Risks

### Lawmakers expectations: corporate compliance



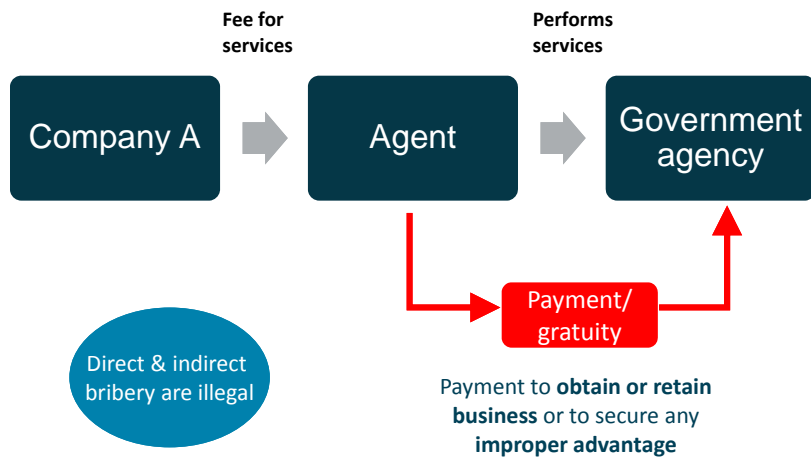
## Control Risks

### Legal summary: facilitation payments

FCPA	UK Bribery Act	Indonesia
Limited exception	No exception	No exception
Payments to expedite performance of a 'routine governmental action.'	Do not have to be substantial – small 'facilitation' payments are bribes	Prohibits promising or giving of a bribe & providing "gratification" in return for a favour. All <b>gifts</b> must be recorded.
Does NOT include decisions by officials to award or continue business.		
Examples: obtaining permits, licences, processing papers (KITAS, work orders), obtaining utilities, loading and unloading cargo, scheduling inspections.		

## Control Risks

### Legal summary: facilitation payments & 3<sup>rd</sup> parties



## Control Risks

### Challenges



## Control Risks

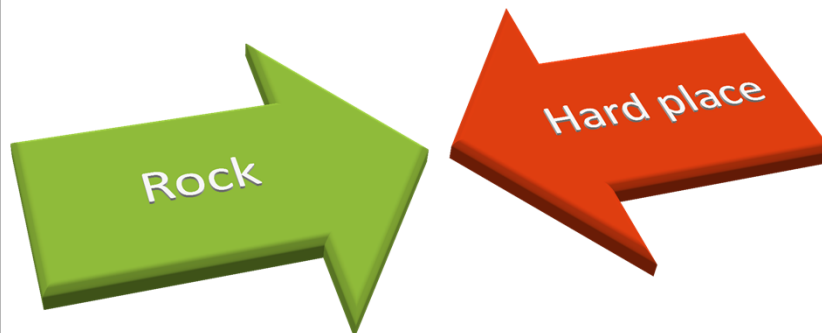
### ■ Observations

- Majority of international companies have well-developed compliance policies
- In Indonesia tension between HQ policies & on-the-ground realities
- Generally committed - but constrained
- 3<sup>rd</sup> parties & facilitation payments very challenging
- Local partners operate to different standards
- Caution in explaining reality to HQ
- In-country senior managers need to think creatively about managing grey areas



## Control Risks

### ■ Where does this leave managers?



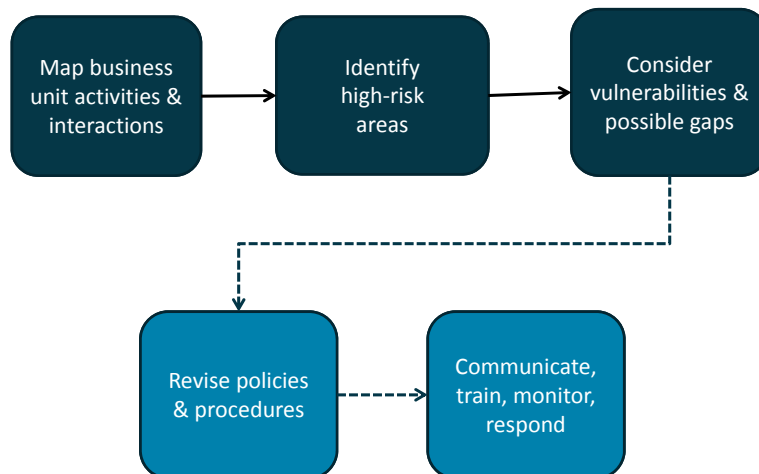
## Control Risks

Resistance



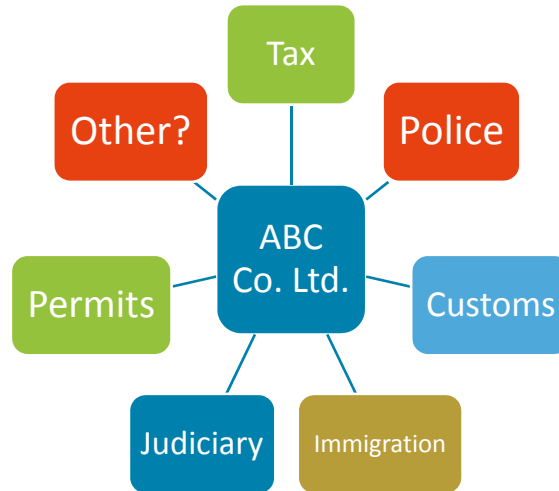
## Control Risks

### ■ First, assess risks...



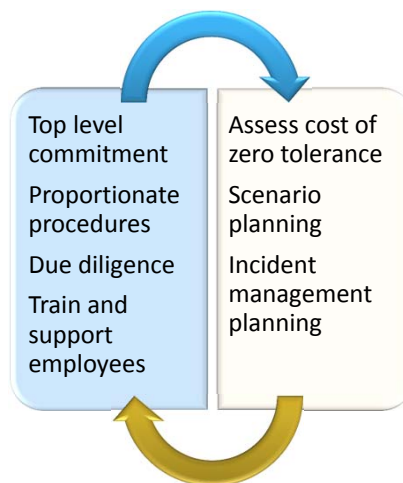
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■ **Facilitation payments: vulnerabilities**

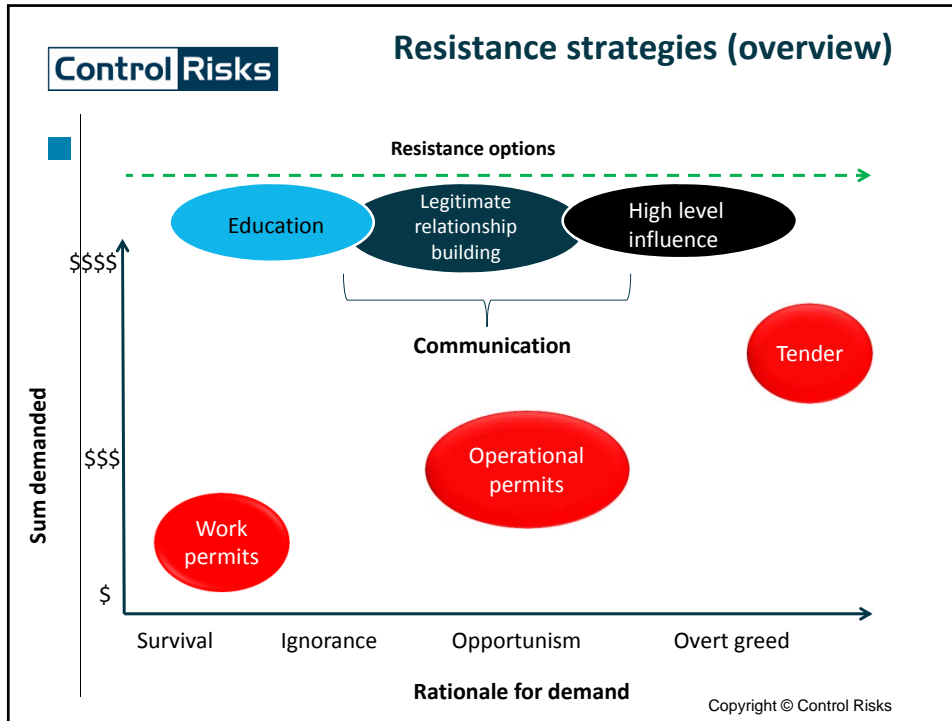


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■ **Risk mitigation**







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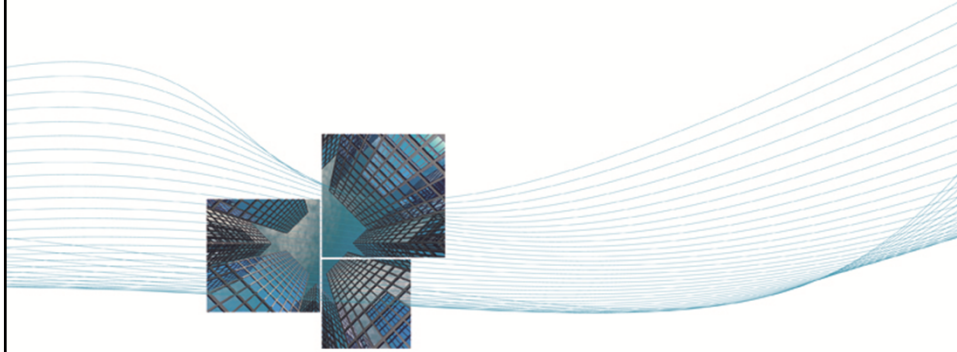
■ **Education & communication is essential**

**Self-education first:** be clear about what is, and is not, acceptable

Companies communicate their position in a number of ways. Some **examples of strategies that work:**

- Meetings with local, mid-level and senior officials in departments to explain company zero tolerance
- Public noticeboards stating commitments
- Workshops/town hall style meetings
- Joint public presentations with other companies

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