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SLIDES: “Human Sustainability” in Natural Resources Industries: The New Frontier in Compliance, Social Responsibility, Disclosure, and Transparency

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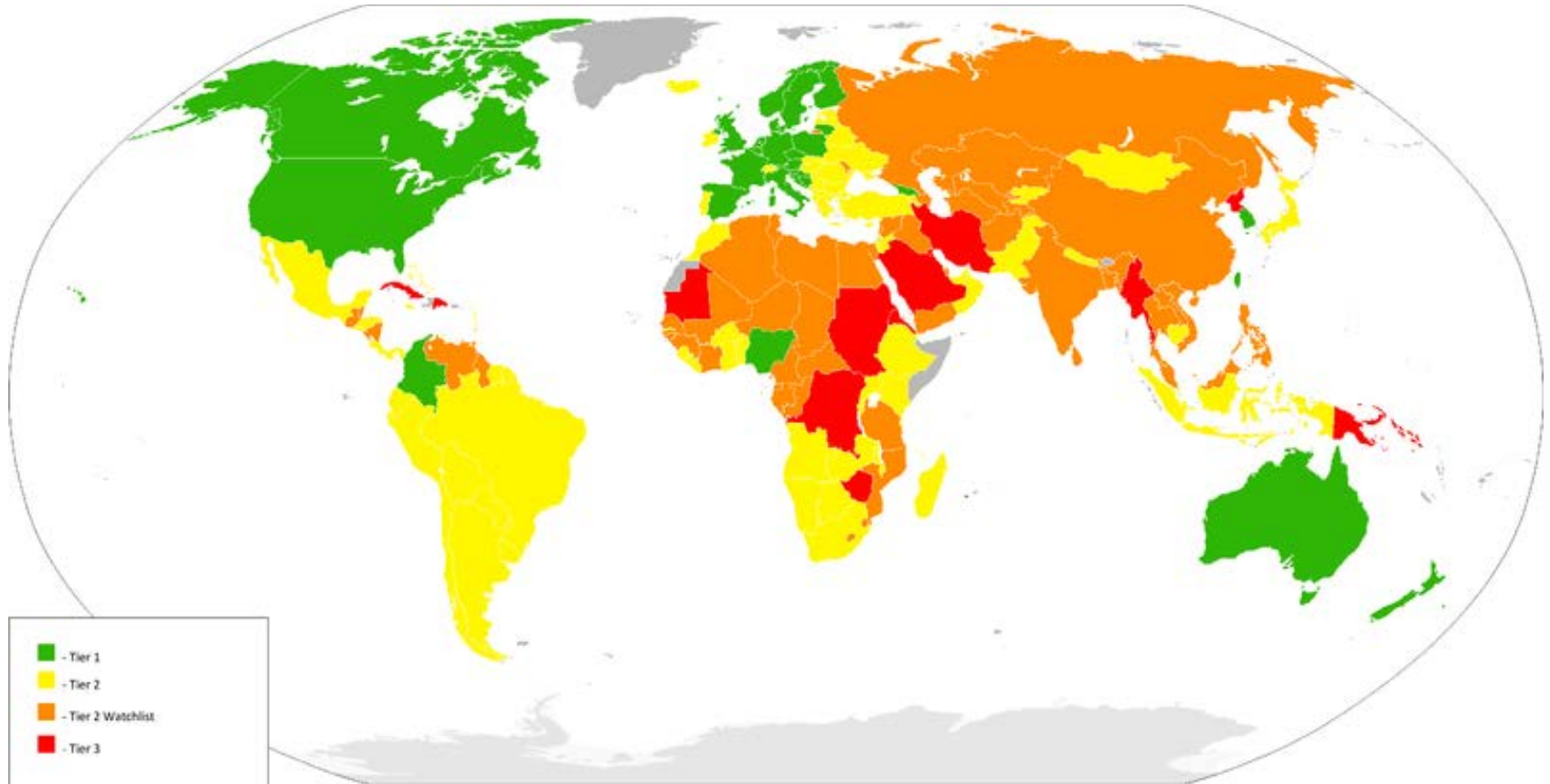
“Human Sustainability” in Natural Resources Industries: The New Frontier in Compliance, Social Responsibility, Disclosure, and Transparency

T. Markus Funk, Partner, Perkins Coie



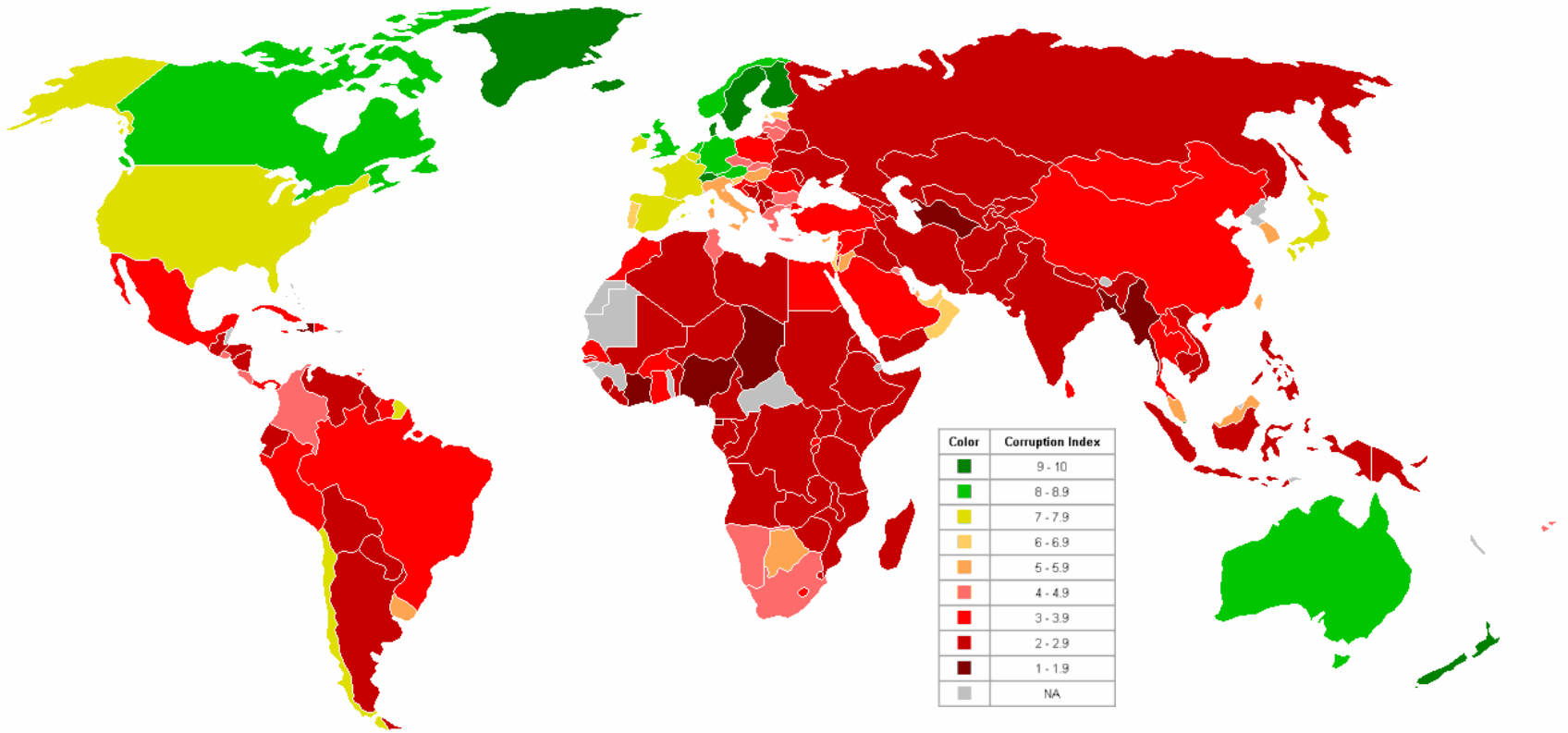
“Corporate Social Responsibility” What is it? And Why Is it Today’s Compliance Hot Topic?

Slide Depicts Where *Labor Trafficking* is Most Prevalent

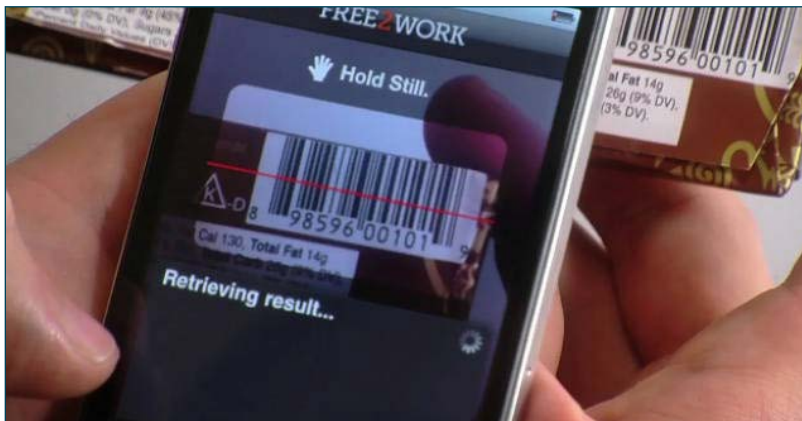
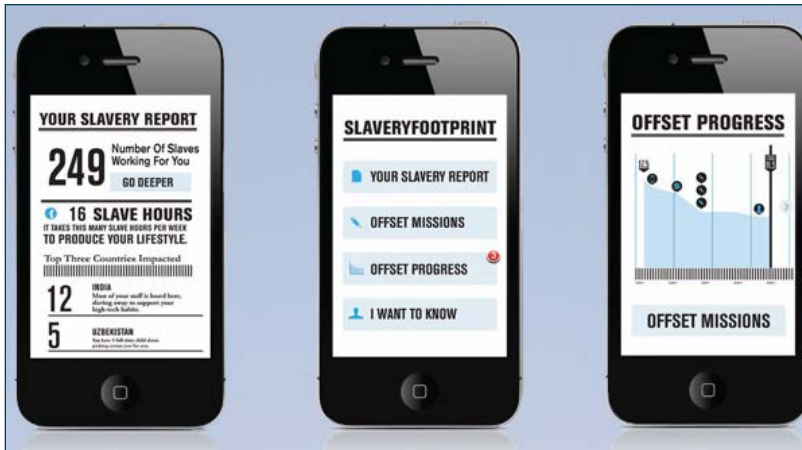


Where is Corruption Most Prevalent?

Transparency International Corruption Perceptions Index
Index Scale of 1 (poor reputation) to 10 (good reputation)



The Power of “Naming and Shaming”





The Foreign Corrupt Practices Act – An Overview

FCPA Primer

- **Anti-bribery Provisions:** The CAP prohibits:
 - 1) Giving or offering;
 - 2) Anything of value;
 - 3) To a foreign government official, political party, or party official;
 - 4) With the **corrupt** intent to influence that official in his or her official capacity; *and*
 - 5) To secure an **improper** advantage in order to obtain or retain business.
- **Accounting Provisions:** “Issuers” must maintain accurate *books and records* and reasonably effective *internal controls*



The California Transparency in Supply Chains Act Disclosure Regime

The California Act Applies To...

Help consumers “distinguish companies or the merits of their efforts to supply products free from threat of slavery and trafficking”

- 1) Retail manufacturer/seller of “any product” (energy, water, fiber, and raw materials could be included directly or downstream);
- 2) With annual gross worldwide receipts exceeding \$100 million;
- 3) And are “Doing business” in California (property or salaries in California exceeding \$50K)
 - Estimated 6,000+ businesses are on the list
 - ✓ Covered Companies must detail efforts to eradicate trafficking and forced labor from their global supply chains
 - ✓ 2014 Efforts to Reanimate H.R. 2759 (“The Business Transparency on Trafficking and Slavery Act”)



**Want a Federal Contract?
Join the U.S. Government's Global
Anti-Trafficking Fight**

Executive Order on Trafficking in Federal Contracts

- “We’re making clear that American tax dollars must never, ever be used to support the trafficking of human beings. We will have zero tolerance. We mean what we say. We will enforce it.”
 - President Obama, September 25, 2012

Executive Order on Trafficking in Federal Contracts (cont'd)

➤ Impacts?

- Over 300,000 federal contractors and direct subcontractors must report anti-trafficking efforts
- Compliance also for suppliers and transaction partners?
- **Mandatory:**
 - 1) No trafficking activity in supply chain *and*
 - 2) Agree to **self-report** and take remedial action if identify any activities “inconsistent with” the Executive Order

Executive Order on Trafficking in Federal Contracts (cont'd)

➤ Why Comply?

- **Debarment**

- Business death knell for non-compliance (9.406-2)

- **Imprisonment**

- “Knowing and willful” false certification is a crime. Reckless disregard or conscious avoidance of truth qualify as “knowing.” Consequences include up to *5 years imprisonment* & a \$250K fine.

- **False Claims Act**

- Government Fraud (31 U.S.C. § 3729)

- **Class Actions**

- Deceptive advertising? FTC Action?

- **Advocacy Group Pressure**

- Hundreds of advocacy groups around world are targeting businesses.

- **Consumer Boycotts**

- Few want products made with child or trafficked labor. Trafficking is today’s “hot topic”.



European Union CSR Initiatives

European Union & CSR

- EU strategy 2014 – “enhancing the visibility of CSR and improving the disclosure of social and environmental data”
- EU expected to publish proposals in 2014 on how it will monitor the CSR policy commitments of EU based companies with over 1000 employees, regardless of where their operations are located
- One aim of the legislative measures being considered is to *“improve accountability and promote sustainable business among multinationals”*
- Already held public consultation on “green-washing” to address it specifically in the Unfair Commercial Practices Directive

A faint, light brown world map is visible in the background of the slide. The map shows the continents and is centered on the Atlantic Ocean.

How Should Companies Respond to this Risk?

Third-Party Risk Reigns Supreme

Q: Greatest Source of Compliance Risk (CSR & Corruption)?

A: Transaction Partners such as suppliers, distributors, agents, consultants, and customs expeditors (particularly in the developing world)

- **Small subset** of third-party “bad actors” responsible for bulk of compliance risk
- *E.g.*, Supplier who engages in trafficking or bribery likely also violates other human rights, social, and environmental laws and regs and will deceive customers

Action Items

- **Understand and Respond** to spectrum of significant risks: governmental intervention; consumer boycotts; class actions; advocacy group pressure
- **Root out** bad actors through vetting and due diligence
- **Control** “marginal” actors through effective and focused training
- **Be able** to demonstrate effectiveness of efforts to government(s), consumers, shareholders, and advocates
- **Conduct** targeted pre-deal due diligence

Specific Steps

➤ Tailored Risk Assessment

- Start with 'Hot Spots' where strategic suppliers have operations
- Use Red Flag Indicators to Screen
- Focus on Labor traceability at sample facilities in high risk areas

➤ Detailed Compliance Program

- Policy commitments
- Terms & conditions of business
- Supplier codes, measurable standards & reporting mechanisms

➤ Communicate & Train

➤ Monitor, Audit, & Remediate

➤ Periodic Reviews

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A dark teal background featuring a faint, light teal world map. The map shows the continents of North America, South America, Europe, Africa, Asia, and Australia. A white rounded rectangular border is positioned in the center of the slide, framing the text.

Questions?