

Anti-Corruption Investigations in China

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A Broader PerspectiveSM



Today's Presenters



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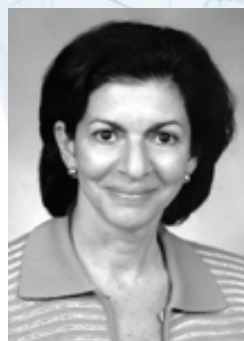
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Agenda

- Reach of the FCPA in China
- Chinese Bribery and Corruption Laws
- High Risk Industries and Transactions
- Challenges for Anti-Corruption Investigations in China
- Analysis of Transactional Data and Information on Anti-Corruption Investigations in China



Reach of the FCPA in China

Landscape and Corruption Risk Profile

- Convergence of FCPA Enforcement and the cultural landscape in China
 - > Letter of the law and the culture of gift giving
 - Business culture based on “guanxi”
- Travel to US by Chinese Officials
 - What’s on their itinerary?
- Vast network of government officials
- Many regulatory touches with government officials
- Government ownership/control of commercial entities
- Prevalent use of third parties

FCPA Matters Involving Chinese Companies or Individuals

- More than 40 individuals and entities, so far
- Notable matters
 - > Lucent Technologies
 - > Paradigm
 - > Siemens
 - > Faro Technologies, Inc
 - > York International
 - > InVision

Who Could Be Liable

- An issuer or domestic concern
 - > Faro Technologies, Inc
- A foreign subsidiary of an issuer or domestic concern can be considered its “agent”
 - > DPC (Tianjin) Ltd.
- Action by foreign companies and individuals in furtherance of prohibited conduct “while in the territory of the United States”
 - > Syncor Taiwan, SSI International Far East Ltd. (“SSI Korea”)
- Issuers liable under books and records and internal controls provisions for foreign subsidiaries’ misconduct
 - > York International, Faro Technologies, Inc



Chinese Bribery and Corruption Laws



Background

- Punishes both giving and taking of bribes
- Criminal bribery v. Commercial bribery
- Comparison with FCPA

Notable Corruption Matters

- Criminal Bribery
 - > China Mobile Executives Li Hua and Zhang Chunjiang
 - > Capital Airports Holding Company Ex-Chairman Li Peiying
 - > State Food and Drug Administration, former Head Zheng Xiaoyu
- Commercial Bribery
 - > Rio Tinto
 - > Toyota

Enforcement Trends

- Increasing emphasis on commercial bribery, with a focus on multinational corporations
- \$4.62b recovered in graft and bribery prosecutions between 2005 and 2010
- Does self-disclosure/co-operation work in China?
- Increased scrutiny of technology companies doing work with China, especially from Silicon Valley; possible joint agency cooperation (SEC/DOJ/IRS)



High Risk Industries and Transactions

Private Equity Funds/ Hedge Funds/Sovereign Wealth Funds

- High profile sovereign wealth funds in high risk countries
 - > Employees of SWFs may satisfy “foreign official” element of FCPA
- Industry-wide FCPA sweep by US regulators
- Investments made by US-based PE or Hedge Funds in foreign private company could become FCPA focus
 - > Sensata Technology Holding NV, owned by private equity firm Bain Capital, voluntarily disclosed to the SEC the possibility of FCPA violations in China
- SEC focused on role of third parties and placement agents in investments made by Funds sponsored by states and municipalities in the US (“pay-to-play” cases)
 - > Gift, travel and entertainment expenses
- Real Estate

Structuring Transactions Involving China's \$134 Billion Healthcare Stimulus

- Working with “doctors”
 - > Communist Party is not alone
- Setting up high end clinics in China
 - > Getting around State controlled pricing
 - > Public/private hospitals



Telecommunications

- China Mobile
- Lucent Technologies



Other Industries

- Infrastructure
 - > ITT Corporation, Siemens
- Oil & Natural Gas
 - > Paradigm B.V.
- Other

High Risk Counterparties and Business Partners

- State-owned Enterprises
 - > Government ownership in business across numerous industries
- Government Regulators
 - > Project approvals, business licensing, regulatory compliance
 - extensive processes and high government interaction
- Agents, Distributors, or other Third-party Representatives

High Risk Activities

- Mergers and Acquisitions
 - > Reverse Merger
 - > Entertainment and Travel
 - Siemens AG, Avon Products, Lucent Technologies, Paradigm B.V., Medical Device Manufacturers (Medtronic, Stryker, Zimmer, Smith & Nephew, Biomet, etc.)
 - > Government Licenses and Approvals
- Joint Ventures
 - > RAE Systems



Challenges for Anti-Corruption Investigations in China

Specific Challenges

- Attorney-client privilege issues
- Overlap with PRC audits and investigations
- Local language and cultural sensitivity
- Document review issues
- Effective handling of Chinese language characters by data analytics tools

Attorney-Client Privilege Issues

- Who is conducting the investigation?
 - > Routine audit/compliance v. counsel-led investigation
- No effective privilege in China
- Upjohn warnings

Overlap with PRC Audits and Investigations

- Lack of due process
- Enlargement of PRC investigations to information/data sources outside of PRC



Local Language and Cultural Sensitivity

- Conducting interviews
- Employees' rights
- Privacy rights
- Perception of what constitutes a bribe



Document Review Issues

- Subject to U.S. Jurisdiction?
- Review off-shore or in U.S.
- Insuring date-review tool properly handles Asian characters
- State secret/political sensitivity issues



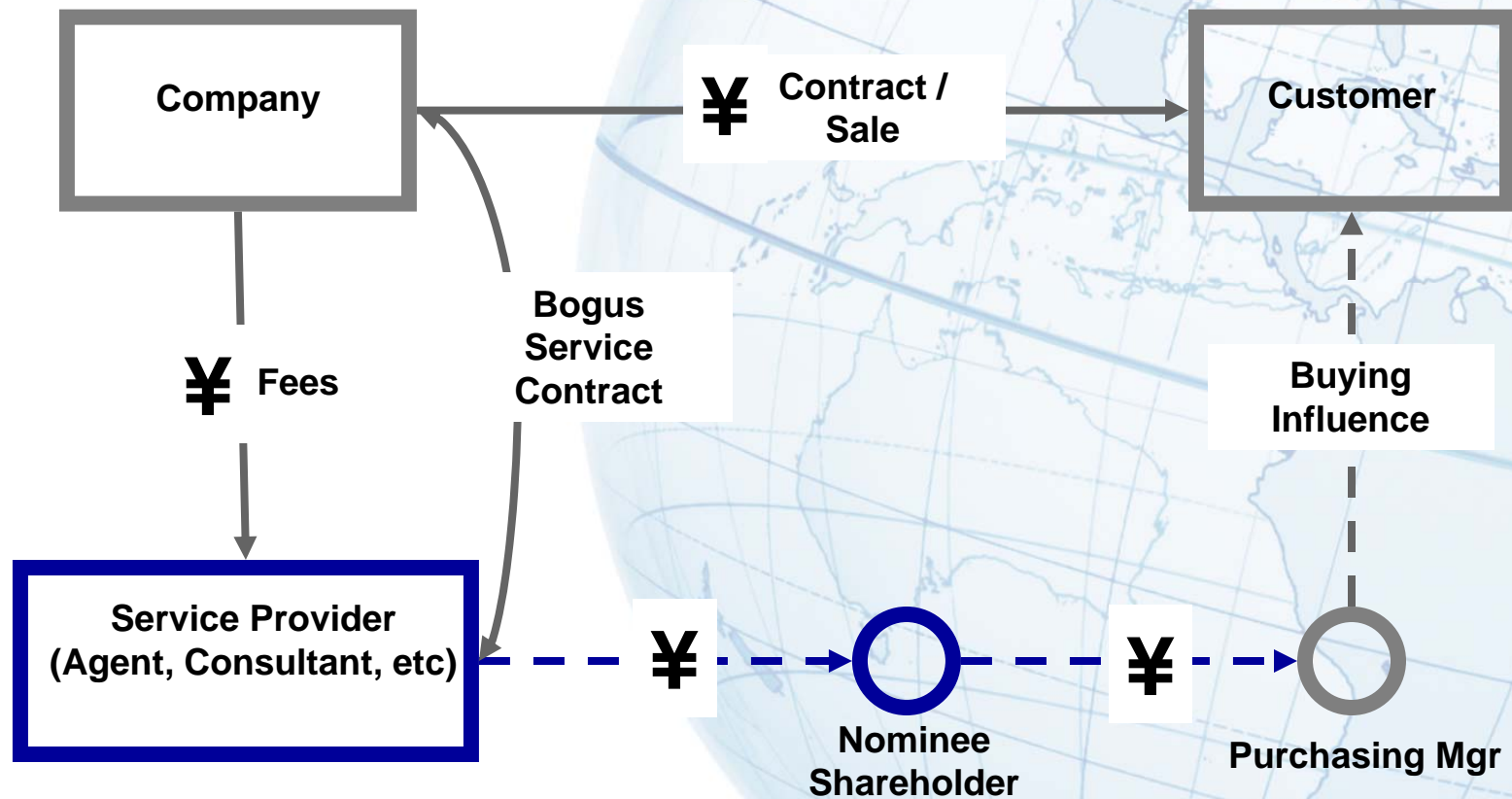
Analysis of Transactional Data and Information on Anti- Corruption Investigations in China

- What are these?

- > Support for an expense claim
- > Receipts from a restaurant
- > A bribe
- > Potentially all of the above

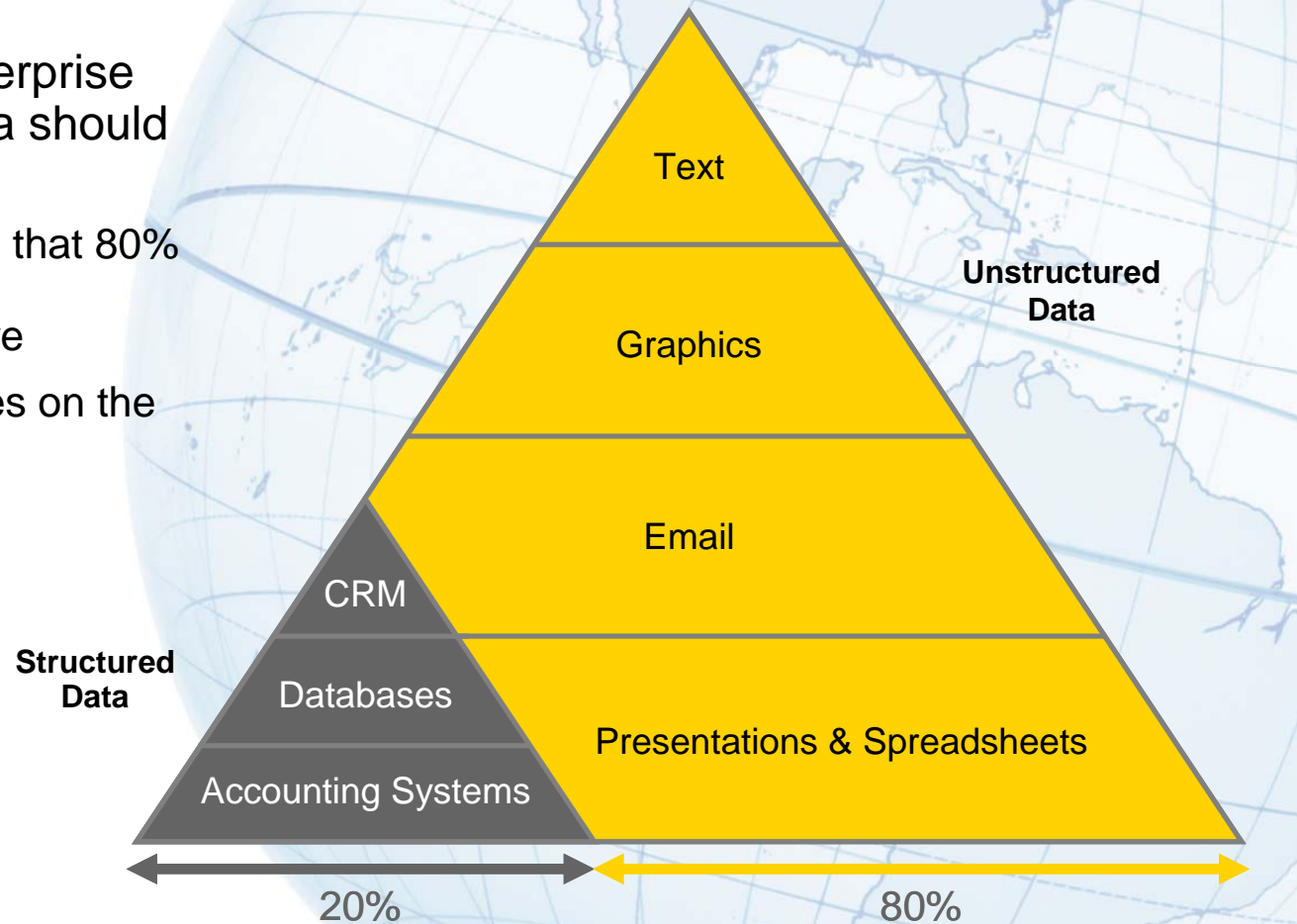


Example: Intermediary - Driven Kickback



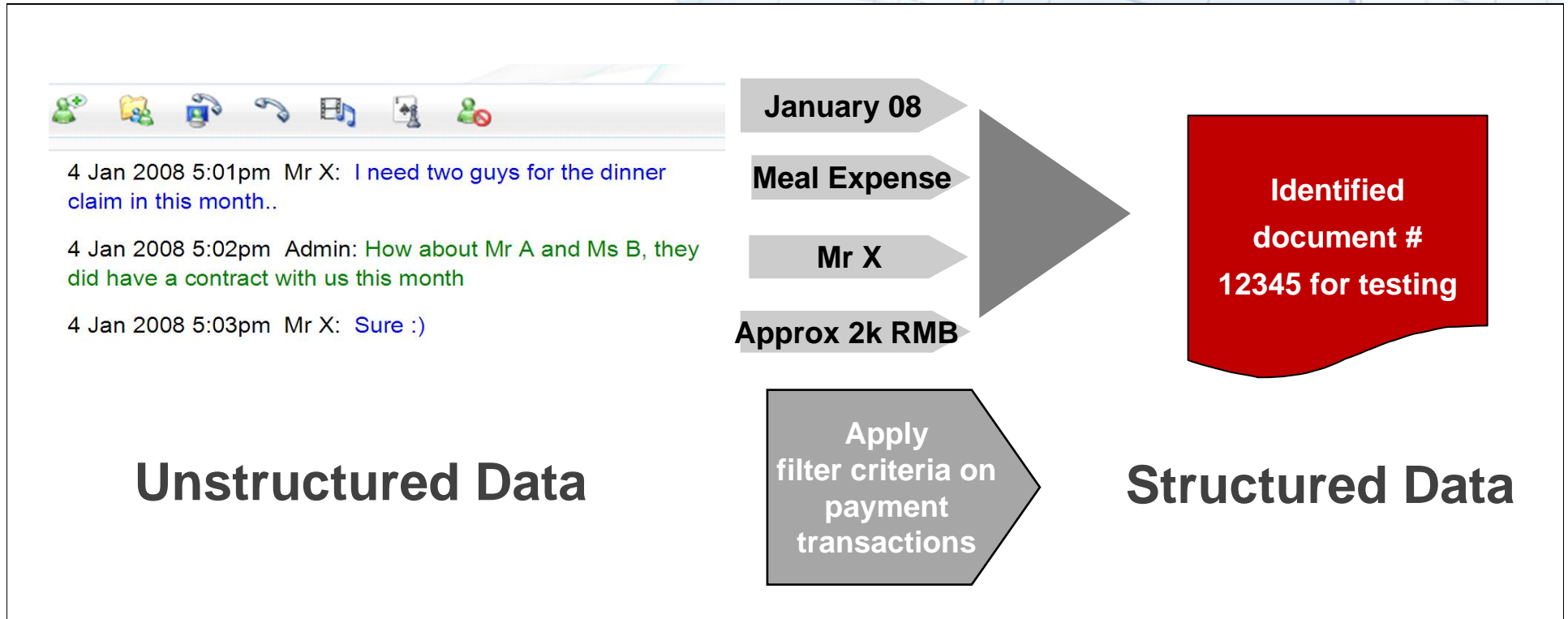
Unstructured Data Analytics

- When considering enterprise risk, all sources of data should be addressed
 - > Gartner study shows that 80% of enterprise data is unstructured in nature
 - > Most analysis focuses on the 20% structured data



Source: Gartner Research

Linking Unstructured and Structured Data



Compliance

- Key component of any anti-corruption investigation
- Instituting anti-corruption compliance program
- Evaluating discipline
- Remedial measures



Questions & Answers

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Appendix

Common Corruption Risk Areas

- Employee Sales and Marketing Expense
 - > Cash Advances
 - > Travel and Entertainment Expense
 - > Gifts
 - Cash
 - Cash equivalents
 - Material items
- Procurement and Sales
 - > Kickbacks
- Promotion Activities
 - > Sponsored Travel
 - False travel agent invoices
 - False meeting organizer invoices
 - > Conferences / Meetings
 - Business Content vs. Entertainment
- Use of Agents and Intermediaries
 - > Commission Payments to Brokers, Distributors, Trading Companies
 - > Consultants
 - > Design Institutes
 - > Travel agents
 - > “Service Fees”
- Charitable Donations