

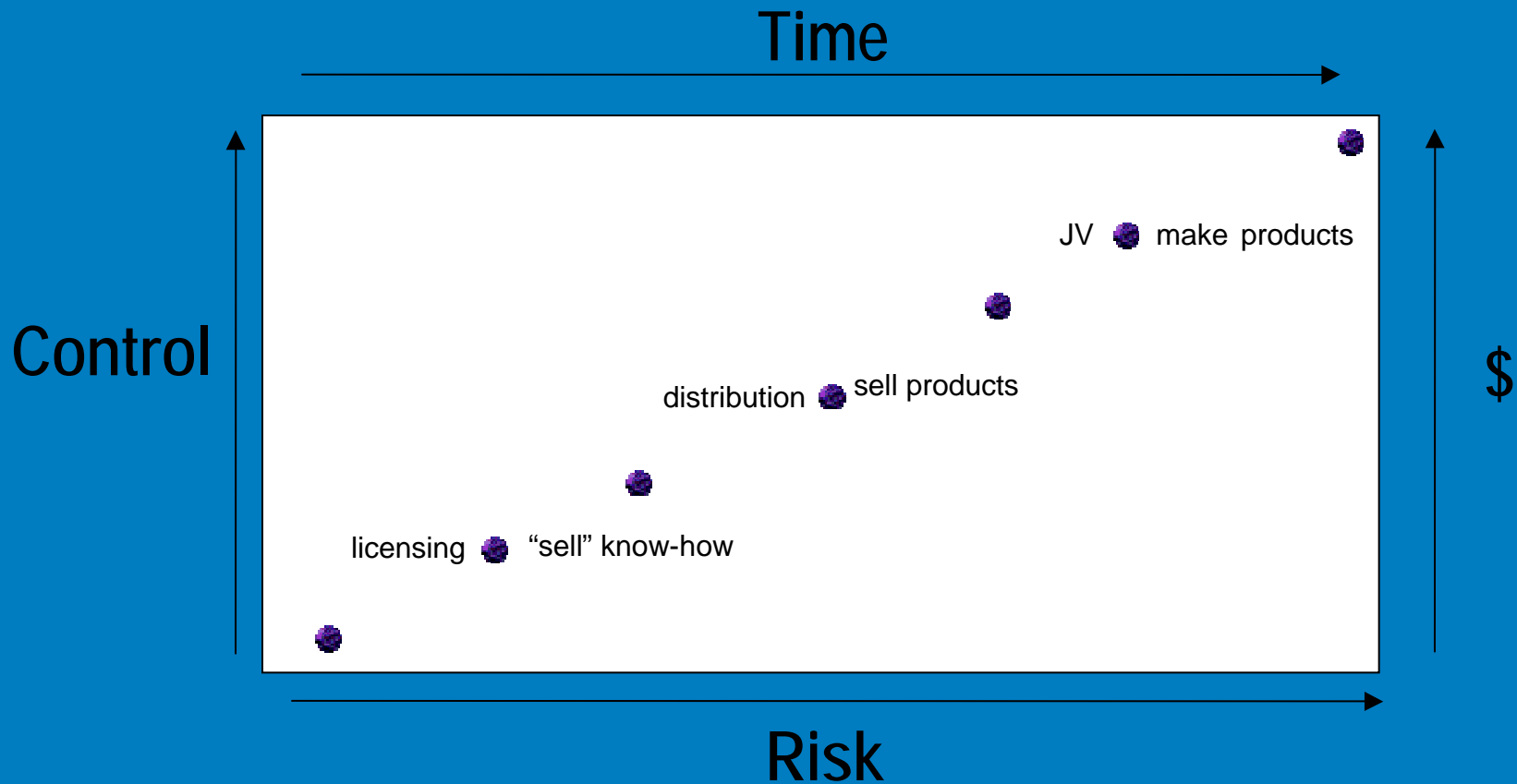


DISTRIBUTION AGREEMENTS IN COLOMBIA

David Dubberly

January 31, 2011

Some Export Contract Options



Other Types of International Contracts



- Franchising
- Outsource design or manufacture of products
- Architectural, engineering, construction services
- Contractor, employment, separation
- Lease industrial space
- M&A

Limit Liability

- Start slowly
 - Less complicated arrangements
 - Companies/people
 - Good reputation
 - You're comfortable with
 - Short term
 - Limited territory
 - Close to home



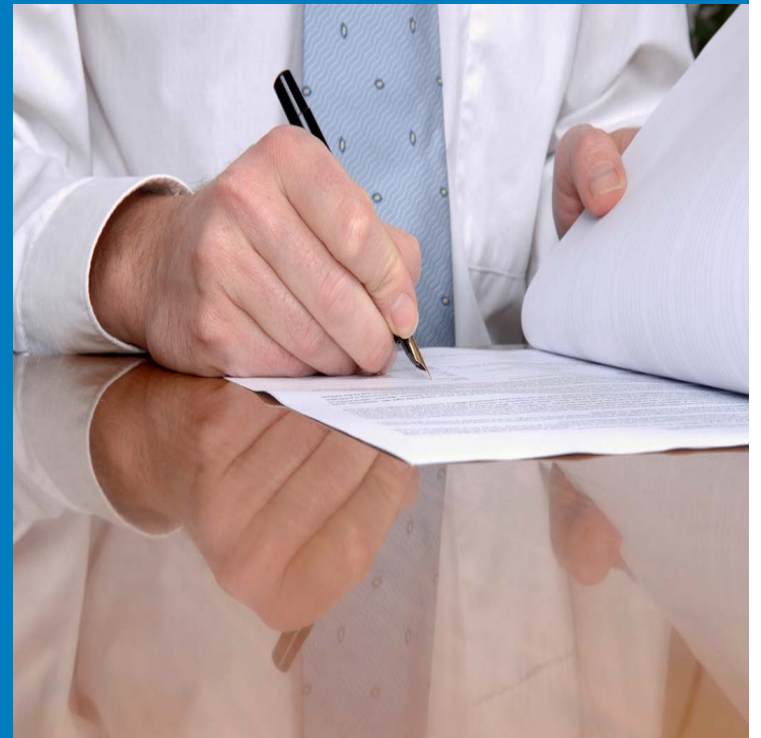
Limit Liability

- Due diligence
 - Corporate existence/good standing certificate(s)
 - Credit and legal report
 - Distributor application
 - Owners
 - QA systems
 - Suppliers represented
 - Experience with import licenses
 - Number of sales reps
 - Sales
 - Bank references
 - Local market information



Limit Liability

- Written agreement
 - Rights, responsibilities of each party
 - Clear, unambiguous language
 - Format, length
 - Force majeure: what if unexpected events occur?
 - Payment terms
 - No implied warranties
 - Limitation of liability



Limit Liability

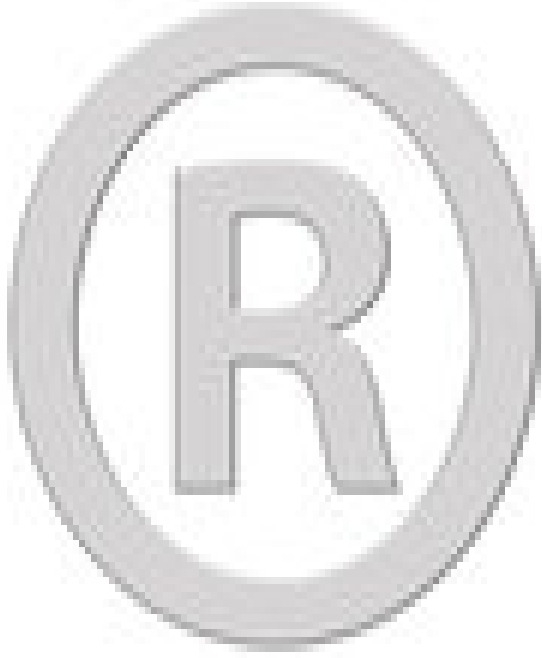
- Written agreement cont'd
 - Term
 - Termination, consequences of termination
 - Avoiding undesired default provisions of local law
 - FCPA representations and warranties
 - Language
 - Arbitration

Get Paid



- Become familiar with LC's
- Become familiar with INCOTERMS
- Look into Ex-Im, SBA, OPIC financing
- Consider credit and political risk insurance
- Retain security interest in goods until buyer pays
- Specify payments are net of taxes and other local government charges

Protect IP



- Register trademarks in target markets in your name
 - Patents, copyrights
 - No local partner registration
- Use copyright and confidentiality notices on proprietary information
- Include ND, NC, and IP ownership clauses in contracts
 - Notify of infringement

Colombian Law Questions

(See handout from Rodríguez & Cavelier)



- Importance of local counsel
- Registration and approval requirements
- Restrictions on contract terms
 - Prices
 - Territory
 - Non-competes
- Arbitration awards enforced?

Colombian Law Questions

(See handout from Rodríguez & Cavelier)

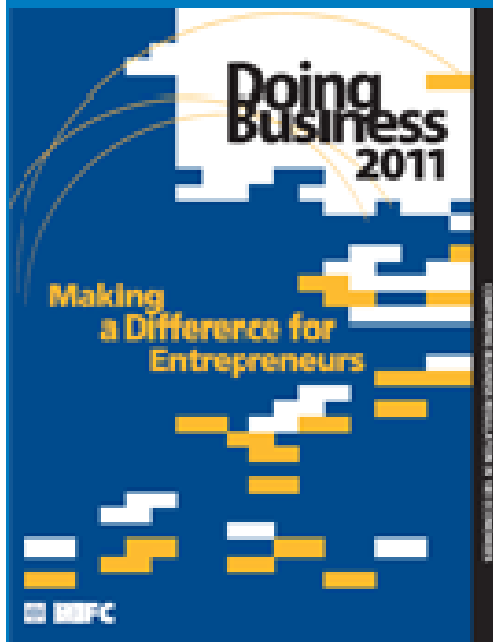
- Restrictions on terminating distribution agreements
 - Mandatory notice
 - Mandatory post-termination compensation
- Procedure for registering IP
- Tax issues
 - Permanent establishment
 - Tax rate on royalties and licensing fees
 - Withholding taxes

Colombia's Doing Business Rankings

IFC International Finance Corporation THE WORLD BANK

DOING BUSINESS
MEASURING BUSINESS REGULATIONS

- 39 (of 183) for ease of doing business
- 73 for starting a business
- 65 for getting credit
- 5 for protecting investors
- 118 for paying taxes
- 99 for trading across borders
- 150 for enforcing contracts



Distribution Contract Issues



- What products covered?
- Your proprietary rights
- Independent contractor
- Term, termination
- Territory
- Exclusivity
- Payment and retention of title
- Compliance with local law requirements
- Reports
- Insurance, indemnity, warranty

Foreign Corrupt Practices Act

- Prohibits offering or giving “anything of value” to foreign official or public sector employee “corruptly” to obtain or retain business
- Not OK: large gifts and lavish entertainment
- OK: minor “facilitating payments” to expedite the performance of routine actions
- Usually OK: promotional samples of products
- Criminal and civil penalties for violations: fines, disqualification from receiving export licenses, disqualification from doing business with U.S. government
- Books and records rules applicable to public companies



Tuesday, May 26, 2009

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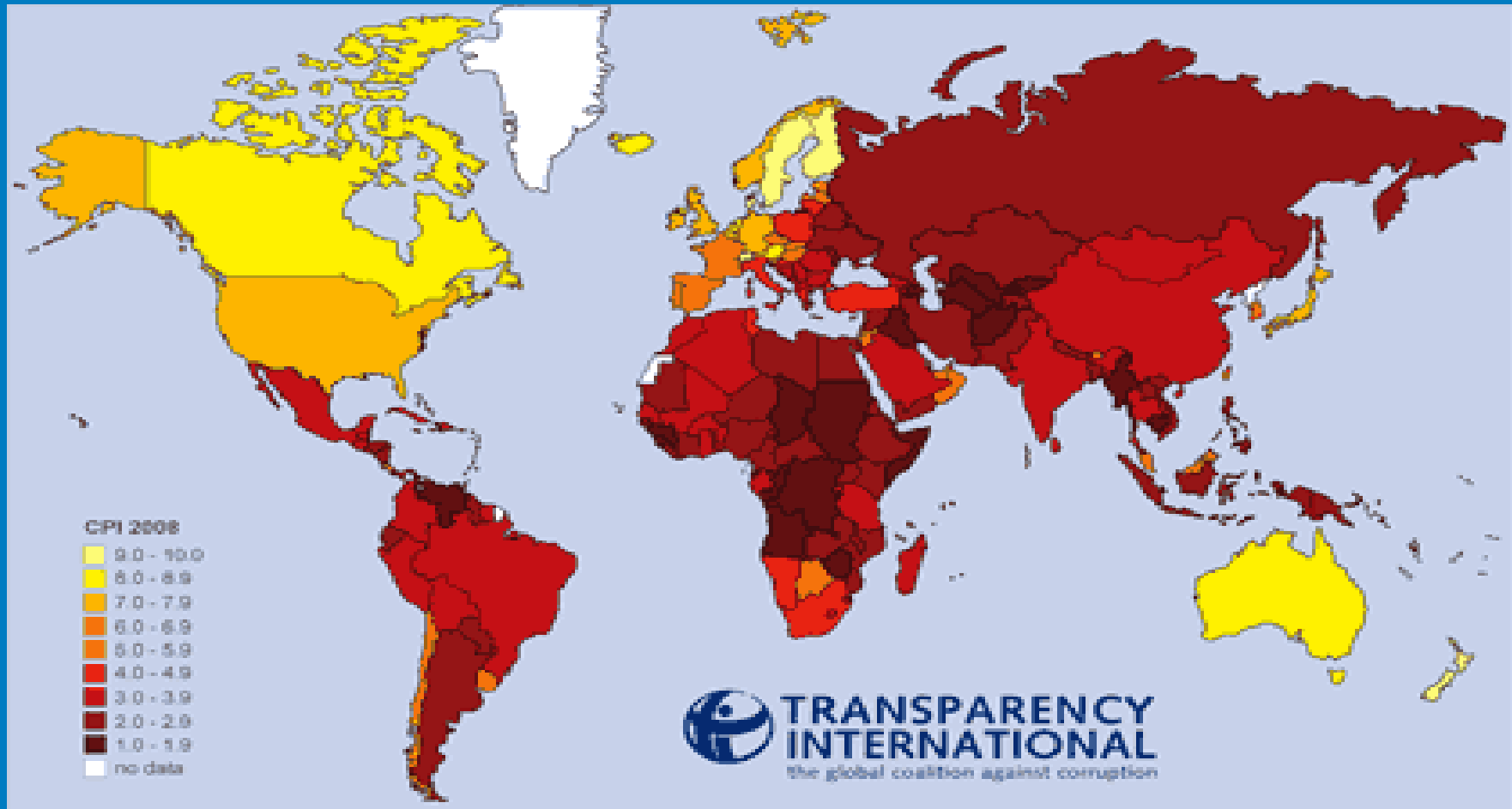
By DIONNE SEARCEY

The Justice Department is increasing its prosecutions of alleged acts of foreign bribery by U.S. corporations, forcing them to take costly steps to defend against scrutiny.

The crackdown under the Foreign Corrupt Practices Act, or FCPA -- a post-Watergate law largely dormant for decades -- now extends across five continents and penetrates entire industries, including energy and medical devices. Among the companies currently under Justice Department review: Sun Microsystems Inc. and Royal Dutch Shell PLC, according to the companies' disclosures.

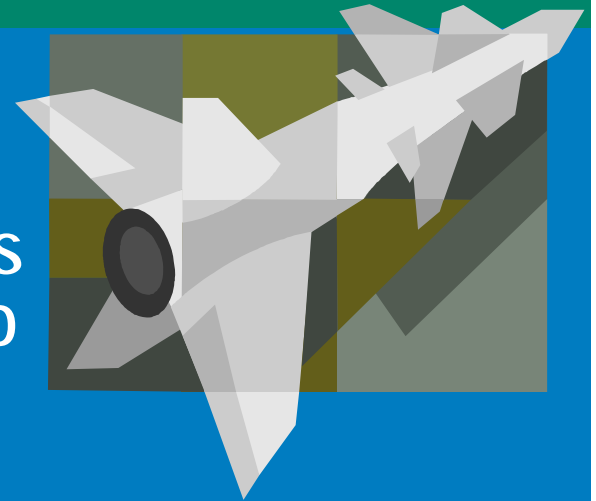
At least 120 companies are under investigation, according to Mark Mendelsohn, a deputy chief in the Justice Department division overseeing the prosecutions, up from 100 at the end of last year.

Corruption Perceptions Index



International Traffic in Arms Regulations

- Enforced by Directorate of Defense Trade Controls at U.S. Department of State
- Controls export of defense-related articles listed on "United States Munitions List" to foreign countries
- Register any export of components or technical data described on Munitions List
- Export license required if no exception
- Information relating to such articles may only be shared with "U.S. Persons" unless approved by State Department or special exemption is used



Questions?

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