

## *Cultural Considerations and the FCPA*

### *Part II: Compliance*

*December 22, 2011*

Do considerations of culture have a place in the FCPA? Yes and no – it depends on the context. [Part 1](#) of this article discusses culture’s role in *enforcement*. Part 2 (below) discusses its role in *compliance*.

**Part II. Compliance.** While cultural norms have no relevance in enforcement ([see Part 1](#)), they have an important place in compliance. In fact, grounding compliance policies in local cultures can be vital to building a successful global program. Consider these three areas:

*1. Emphasize Local Laws in Compliance.* Any employee of a company subject to the FCPA can create liability for the company by paying bribes, no matter how far away from the United States the employee resides. The problem is that, the further away from the United States the employee sits, the more abstract, foreign, and insignificant the FCPA can seem. How does a company emphasize the importance of FCPA compliance for those situated far from headquarters? One way is by emphasizing local anti-corruption laws in compliance policies, guidelines, and trainings. According to Therese Lee, Global Ethics and Compliance Counsel for Google Inc., “We are able to generate deeper compliance buy-in from our teams throughout the world by discussing local rules and regulations – in addition to the FCPA – during anti-corruption training.”

*2. Make Trainings “Local”.* Compliance trainings can be more effective when they incorporate cultural considerations and are conducted in local languages. For example, by role-playing corruption scenarios common in a specific country, employees can better understand the dynamics of compliance. Your Brazilian employees can be shown, in Portuguese, what to do when an official asks for “*uma propina*.” Your Mexican team can be trained on how to handle a “*mordida*” request from the electricity company. They will better grasp expectations and rules.

In fact, training in local languages may be an emerging “best practice.” In the recent [shareholder derivative lawsuit settlement](#) with the pharmaceutical company SciClone, one of the measures required in the settlement was that SciClone conduct annual trainings of its Chinese employees in Mandarin. Though FCPA enforcement has yet to require such a level of training, at the very least a company can be rest assured that it is following the highest of standards if it conducts trainings in-person and in the local language.

*3. Be Sensitive to Cultural Concerns of Acquired Companies:* I recently had a conversation with a friend who had been sent by her law firm to manage the FCPA compliance integration of a recently-acquired company in central Brazil. The local company was a family-owned business that had never been exposed to compliance and needed to be brought up to speed quickly. To achieve this, my friend spent six months embedded in the local company’s offices.

She said that she could not have done her job successfully without a high degree of cultural sensitivity. This meant listening to local employees more often than dictating to them, knowing

when and when not to introduce new compliance concepts and correct lingering misunderstandings, sensing when to concede issues and when to push back, and artfully generating buy-in from the company's various sectors. It meant first building respect and trust through personal relationships – this meant dinners and family gatherings with her local colleagues. It also meant slowly educating the company on the stakes associated with non-compliance and the rationale behind the rules. After six months, the local company was up to speed and had internalized the compliance processes in a way it would not have if compliance would have been one-way mandated.

*This article is reprinted from the FCPAméricas Blog. It is not intended to provide legal advice to its readers. Blog entries and posts include only the thoughts, ideas, and impressions of the authors and contributors, and should be considered general information only about the Americas, anti-corruption laws including the U.S. Foreign Corrupt Practices Act, issues related to anti-corruption compliance, and any other matters addressed. Nothing in this publication should be interpreted to constitute legal advice or services of any kind. Furthermore, information found on this blog should not be used as the basis for decisions or actions that may affect your business; instead, companies and businesspeople should seek legal counsel from qualified lawyers regarding anti-corruption laws or any other legal issue. The Editor and the contributors to this blog shall not be responsible for any losses incurred by a reader or a company as a result of information provided in this publication. For more information, please contact [Info@MattesonEllisLaw.com](mailto:Info@MattesonEllisLaw.com).*

*The author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author.*

*@2011 Matteson Ellis Law, PLLC*