

Building and Enhancing FCPA Compliance

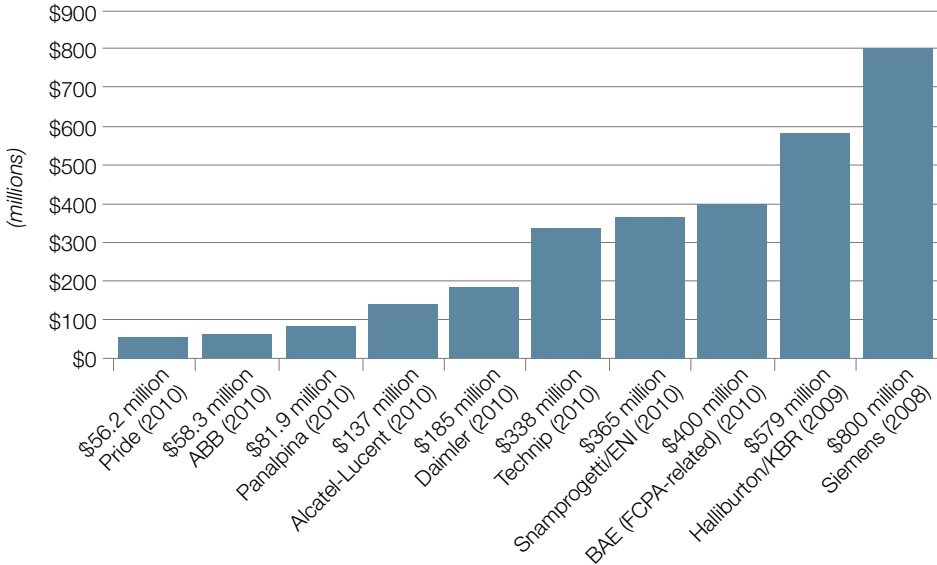
A White Paper by Jonathan T. Marks

Stringent enforcement and significant criminal and civil penalties make the FCPA a powerful weapon in the global war on corruption. A 13-step action plan can enhance a company's compliance and possibly limit its liability.



A new record in U.S. Foreign Corrupt Practices Act of 1977 (FCPA) enforcement was set in 2010. From 2009 to 2010, the number of enforcement actions more than doubled and total fines against companies and individuals nearly tripled. The U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) collected almost \$2 billion in FCPA-related fines. As shown in Exhibit 1, some of the largest fines were paid by non-U.S. companies, such as British security specialists BAE Systems, German carmaker Daimler AG, and French telecommunications company Alcatel-Lucent. Concurrent settlements by Panalpina World Transport Holding Ltd., a Swiss freight forwarding company, and six of its customers – including Royal Dutch Shell plc – paid a combined total of \$236.5 million in fines to resolve related FCPA enforcement actions.¹

Exhibit 1: Largest FCPA Settlements (Combined Penalties)



Source: Miller & Chevalier Publications

The current high rate of identification and prosecution of activities that run afoul of the statute demonstrates the U.S. government’s renewed efforts to crack down on companies and individuals that pay bribes to foreign officials to obtain or maintain business opportunities.

For multinational corporations, compliance efforts are complicated by the broad reach of the FCPA. Companies and their employees are being held liable for the improper conduct of agents and channel partners even in instances when the companies may have been unaware of corrupt activities. The recent conviction of Connecticut investor Frederic Bourke for engaging in “conscious indifference” in that he knew – or *should have known* – that bribery and corruption were involved in the proposed acquisition of Azerbaijan’s state oil company demonstrates the broad reach of the FCPA in joint ventures, mergers, or acquisition transactions.²

Lack of awareness is what gets companies in trouble. Now more than ever before, it is important for companies conducting business internationally to accurately measure, proactively manage, and continuously assess compliance and anti-corruption risk with a robust FCPA compliance program. Top-to-bottom knowledge of the FCPA and its anti-corruption requirements is necessary to minimize the risk of sanctions.

This paper addresses many of the issues surrounding compliance with FCPA and factors those issues into a concise, nonlegalistic, 13-step action plan for building a culture of compliance. Working through the 13 steps can help organizations design a robust compliance program targeting FCPA violations and other improper payments in ways that can help prevent many violations from occurring. To understand more fully the comprehensive scope of this action plan, however, practitioners first must be familiar with the many elements that give the FCPA – and its British counterpart, the *U.K. Bribery Act* – such broad reach.

Overview of the FCPA

The FCPA prohibits U.S. companies from bribing foreign officials for government contracts and other business. Any U.S. company with business dealings outside the United States must address compliance with the FCPA. Violations of the act recently brought to light involve complicated webs of third parties, charities, sales agents, distributors, and joint ventures.

Public companies with operations abroad are subject to the anti-corruption provisions of the FCPA, which includes anti-bribery, books and records, and internal control environment provisions. FCPA violators are subject to both criminal and civil penalties, and the DOJ and the SEC share enforcement responsibilities under the FCPA. The DOJ is generally responsible for criminal enforcement of the anti-bribery provisions with respect to domestic concerns and foreign companies and nationals. The SEC is generally responsible for civil enforcement of the anti-bribery and accounting provisions.

Media coverage tends to focus on the large, multinational conglomerates that violate the FCPA. But the scope of the FCPA – and penalties associated with violating the wide-ranging act – applies to companies of all sizes, including direct personnel as well as the third-party agents and distributors companies use to navigate the global economy.



The scope of the FCPA – and penalties associated with violating the wide-ranging act – extends to companies of all sizes

New Era of FCPA Enforcement

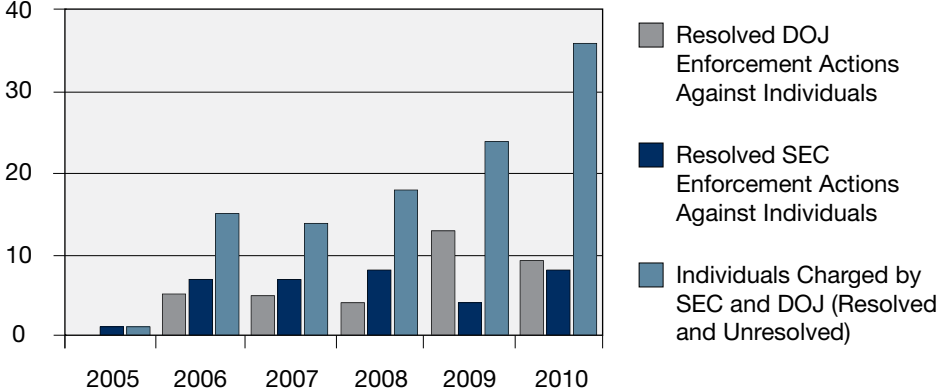
The FCPA is a hot topic among regulatory bodies, which have all stepped up their enforcement efforts in recent years. The SEC and FBI created specialized units for exclusively enforcing and pursuing corruption under the FCPA. The Financial Industry Regulatory Authority announced in 2009 that it would be examining broker-dealers for compliance with the FCPA. Moreover, foreign governments are increasingly flexing their enforcement muscles.

Announcing a new era of FCPA enforcement, the DOJ's Assistant Attorney General Lanny A. Breuer in November 2010 said, "FCPA enforcement is stronger than it's ever been – and getting stronger."³

The size of settlements, number of investigations, and rate of prosecutions against companies and individuals (see Exhibit 2; next page) are up dramatically.

- From 1998 to September 2010, according to the Organisation for Economic Co-operation and Development (OECD), "50 individuals and 28 companies have been convicted of foreign bribery, while 69 individuals and companies have been held civilly liable for foreign bribery. In addition, 26 companies have been sanctioned (without being convicted) for foreign bribery under non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs). Sanctions have also been imposed for accounting misconduct and money laundering related to foreign bribery."⁴
- From 2007 to 2010, the top 10 FCPA settlements in terms of overall dollar amount totaled \$2.8 billion. Five of the top 10 settlements occurred in 2010.⁵
- More FCPA investigations are open and pending resolution now than at any other time since the law's inception. In 2004, the DOJ charged two individuals under the FCPA and collected close to \$11 million in criminal fines. By contrast, in 2009 and 2010 alone, the DOJ charged more than 50 individuals and collected nearly \$2 billion. In November 2010, approximately 35 defendants were awaiting trial on FCPA charges in the United States.⁶
- Prosecutions have increased from less than five per year between 2001 and 2005 to almost 19 per year between 2006 and 2009. Of the 36 individuals who have been convicted of FCPA violations and sentenced since 1998, 25 were sentenced to imprisonment, with the average sentence being slightly longer than 30 months.⁷

Exhibit 2: Increase in DOJ and SEC Enforcement Activity Against Individuals



Source: Miller & Chevalier Publications
Statistics run through Dec. 31, 2010, and include the enforcement action against James Giffen, although he was not convicted on an FCPA charge.

Legislative Developments

The aggressive pace of regulatory enforcement has been reinforced by several new legislative developments.

Whistle-Blower Incentives Increased

The recently passed *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) contains whistle-blower bounty provisions that are expected to accelerate the detection of FCPA violations and the initiation of investigations and prosecutions.⁸ Prior to Dodd-Frank, many companies afforded individuals the option to blow the whistle and a mechanism to do so anonymously. Whistle-blowers under the old rules could collect up to a maximum of 10 percent of the penalty in insider trading cases only.

Under the new law, whistle-blowers stand to make much more. A whistle-blower who provides information to the SEC about a violation of the anti-bribery, books and records, or internal control environment provisions of the FCPA by a public company will receive an award of 10 percent to 30 percent of any monetary sanctions in excess of \$1 million recovered through enforcement actions. From a recovery perspective, a whistle-blower who speaks out in a \$100 million action against a company may end up receiving \$10 million to \$30 million.

This new whistle-blower provision may end up playing a key role in identifying and prosecuting violations of the FCPA. It also increases the risks and pressure on corporations to make sure effective FCPA programs are in place. Given the large size of recent FCPA settlements, the promise of multimillion-dollar bounties will be a strong incentive for potential whistle-blowers to contact the government about FCPA concerns.

The Broad Reach of the *U.K. Bribery Act*

Although enactment has been delayed, the new *U.K. Bribery Act*⁹ is widely expected to become effective in 2011. The operatively stricter and jurisdictionally broader U.K. act applies to all commercial organizations that do business in the United Kingdom (regardless of where the criminal conduct occurs), makes organizations liable for the improper activities of third parties acting on their behalf, and provides no exception for small payments made to expedite or facilitate ministerial governmental actions.

The *U.K. Bribery Act* has a wider reach than the FCPA – which, for example, would not cover conduct by a Latin American company if the corrupt activity had no connection to the United States and the company was not listed on any U.S. stock exchange, even if the company conducted some unrelated business in the United States. The broad jurisdiction of the *U.K. Bribery Act* is designed to facilitate worldwide investigations, often in concert with other countries' prosecutorial bodies.



Comparison of the FCPA and the U.K. Bribery Act

FCPA	U.K. Bribery Act
The FCPA applies only to bribery of foreign officials.	The act covers both commercial bribery and bribery of foreign political officials.
The FCPA does not apply to the receipt of a bribe.	The commercial bribery provisions of the act apply to both the offer and the acceptance of a bribe, while those relating to bribery of foreign political officials apply only to the offer, promise, or payment of a bribe.
The bribery provisions of the FCPA apply to: (1) SEC issuers (U.S. and foreign companies); (2) “domestic concerns”; (3) U.S. persons acting outside the United States in furtherance of a prohibited payment; (4) foreign nationals and entities that commit an act in the United States in furtherance of a prohibited payment; and (5) U.S. or foreign agents of any of the foregoing.	The “failure to prevent bribery” provision applies to: (1) U.K. entities that conduct business in the United Kingdom or elsewhere; and (2) any corporation, wherever formed, that carries on business or part of a business in the United Kingdom.
In alleging violations of the bribery provisions of the FCPA, the government must show that the defendant had the requisite state of mind with respect to his actions (i.e., negligence, recklessness, intent).	The act imposes strict liability on a corporation for “failing to prevent bribery” where an associated person bribes another person regardless of whether that person is a foreign political official or not. The only defense to such a claim is that the company had adequate procedures in place to prevent the bribe.
The FCPA permits facilitation payments for low-level payments for certain routine governmental actions.	The act does not permit an exception for facilitation payments.
The FCPA provides an affirmative defense for payments that are reasonable and bona fide business expenses that are directly related to the promotion, demonstration, or explanation of products or services or the execution or performance of a contract with a foreign government or agency.	The act does not provide an affirmative defense for bona fide business expenses.
The FCPA provides an affirmative defense for payments that are permissible under written local law.	The act provides the same affirmative defense – but only with respect to payments made to foreign political officials. On the other hand, with respect to “commercial bribery,” written local law can be considered only as a mitigating factor in determining what a reasonable payer or payee in the United Kingdom would expect in return for the payment.

Source: Pepper Hamilton LLP

Changes in U.S. Federal Sentencing Guidelines

The amended U.S. Federal Sentencing Guidelines, which became effective on Nov. 1, 2010, open the door to even stiffer criminal sanctions, more focused SEC guidance, and the potential for even heftier civil penalties. These guidelines are seen as the de facto blueprint for corporate ethics and compliance programs. The new rules require periodic independent testing and review to monitor the effectiveness of compliance programs, including FCPA compliance. As a result of these changes, companies should regularly reassess their anti-bribery and anti-corruption compliance programs to evaluate policies and procedures in place to detect and reduce violations of the law, especially in relation to the following directives:

- Individuals with operational responsibility for the compliance and ethics program must report directly to an audit committee, board of directors, or other governing authority.
- Hotline tips and other mechanisms should be used to detect any compliance and ethics violations internally.
- Violations should be reported promptly to the U.S. government. Resolution results are likely to be more favorable to companies that voluntarily report than in situations in which the U.S. government finds out on its own.
- No person with operational responsibility condoned or was willfully ignorant of (that is, had conscious indifference to) any violations of the company compliance policy or the FCPA.

Even before the amended U.S. Federal Sentencing Guidelines were finalized, regulators had begun to make recommendations that align with the final guidance



The Sentencing Guidelines also instruct that “revisions to corporate compliance programs in light of lessons learned” is an important factor in determining if a compliance program is effective.

Even before the Sentencing Guidelines were finalized, regulators had begun to make recommendations that align with the final guidance. In guilty pleas and deferred prosecution agreements on April 1, 2010, the German carmaker Daimler AG and three of its subsidiaries settled charges stemming from millions of dollars paid in bribes in 22 countries around the world. Over the ensuing

months, Daimler AG demonstrated its commitment to ethics and compliance by creating a new board of management position to oversee “Integrity and Legal.” Measures were also taken to establish the position of a chief compliance officer reporting to the new member of the board of management, set up a global compliance organization, place compliance managers in numerous subsidiaries and operating units, and develop an international training program, including regular compliance conferences and seminars.¹⁰

High-Risk FCPA Areas

Every practitioner should be aware of potential hot spots in FCPA compliance in need of special attention. These include third-party relationships, joint ventures, and successor liability resulting from a merger or acquisition.

Third-Party Relationships

The scope of the FCPA extends beyond the direct actions of the company to include third-party relationships with individuals doing business in a culturally accepted or tolerated way that is in conflict with anti-corruption standards. Customs agents, sales agents, distributors, accountants, legal counsel, foreign officials, and others who are often crucial to conducting business globally are considered third-party providers. Controls are necessary to make sure these people are not soliciting bribes or engaging in any type of corrupt activities on behalf of the company. The liability associated with corrupt activities can pass directly through to the corporation.

A common third-party FCPA violation involves suppliers or distributors in foreign countries that use bribes to local officials to push projects through the supply chain faster. Global telecommunications giant Alcatel-Lucent S.A. was sanctioned with a \$137 million settlement due to the third-party activities of individuals involved in joint ventures. In addition to making other changes in its compliance program, Alcatel-Lucent terminated its international agents and consultants, which the company said were the primary source of the improper payments.¹¹

Private equity and portfolio companies also fall under the compliance requirements of FCPA. There is mounting evidence that the purchase of an overseas company could lead to potential FCPA liability. According to The Wall Street Journal, the SEC is investigating Europe's largest insurer, Allianz SE, for possible bribery by a German printing press company in which it holds a majority stake. Although the SEC has never charged a private equity firm based on the conduct of a foreign private company in its portfolio, private equity and portfolio companies must be aware of potential FCPA risks related to investments in foreign companies.¹²

Joint Ventures

Under the FCPA, a company is responsible for the actions of a joint venture for which it is a partner. A joint venture called TSKJ was involved in a bribery matter connected to construction contracts for liquefied natural gas projects on Bonny Island, Nigeria. The joint venture's principals – Technip of France, Dutch-based Snamprogetti (a subsidiary of ENI of Italy), Kellogg, Brown & Root (a former subsidiary of Halliburton), and JGC Corp. of Japan – were fined more than \$1.5 billion.¹³ Not only must a joint venture itself follow the requirements of the FCPA, but also each participating partner has the duty to follow an appropriate compliance policy and to have the internal controls in place to prevent, detect, and deter violations of the act.

Successor Liability in Mergers and Acquisitions (M&A)

Companies involved in M&A negotiations, and that complete M&A transactions without appropriate FCPA due diligence, are at a particularly high risk of noncompliance. A CEO engaged in buying a company should be aware the acquirer and its directors and officers are liable for any corrupt activities that have been taking place at the target company prior to the sale.

Today's buyers need to be aware of the activities the target company engaged in while in business prior to any joint venture, merger (standard or reverse), or acquisition transaction. The potential liabilities for failing to engage in pre-acquisition FCPA due diligence can be severe. According to the DOJ, eLandia was assessed a \$2 million fine after discovering that its recently acquired Florida-based telecommunications services company Latin Node had engaged in bribery and corruption before the acquisition.¹⁴ eLandia subsequently shut down Latin Node as an operating business and wrote off the entire purchase of \$20.6 million.¹⁵

The Complexity of Compliance

When it comes to FCPA compliance, most companies struggle with where to begin. With so many factors in play, the complexity of FCPA compliance can stop organizations from doing what is necessary to commit to broad policies and enforce those policies on the ground.

Exhibit 3: Crowe's Corporate Governance Framework



Prerequisites for a strong FCPA compliance program are good corporate governance (see Exhibit 3), a strong ethical culture, and a comprehensive anti-fraud framework. In practice, culture is often overlooked. An environment that includes the proper “tone from the top” helps shape corporate culture and ultimately leads to good governance. The audit committee oversees management’s implementation of policies that are intended to foster an ethical environment and mitigate financial reporting risks. In this process, the audit committee has the responsibility to see that management designs, documents, and operates effective controls to reduce to an acceptable level the risk of financial reporting fraud. The *Sarbanes-Oxley Act of 2002* also makes the audit committee responsible for establishing ethics and whistle-blower mechanisms for the confidential treatment of complaints – anonymous or other – received by the company regarding accounting, internal accounting controls, or audit matters.

13-Step FCPA Compliance Action Plan

Crowe Horwath LLP's 13 steps simplify FCPA compliance by boiling down the broad scope of anti-bribery and anti-corruption rules and regulations to a set of principles designed to create a robust compliance program. These 13 steps are not prescriptive and do not detail specific anti-bribery measures. Instead, the 13 steps are to be used by companies as a guide when implementing a cohesive, comprehensive, and long-term compliance program for FCPA. Even in situations where violations occur and investigations take place, organizations may receive credit under the U.S. Sentencing Guidelines and with regulators for following the 13-step action plan for compliance.

- 1. Assist in obtaining top-level commitment and establishing a tone from the top.** “Top-level commitment” is a common element of effective compliance programs. FCPA compliance is no exception. This principle combines a strong tone at the top¹⁶ with a clear and firm anti-bribery policy. The board of directors and senior executives must establish a culture within their company in which bribery is unacceptable and there is a zero-tolerance policy toward bribery; defined consequences for violations; a code of conduct; communication of anti-bribery measures to all employees, subsidiaries, and business partners; and the assignment of a senior manager to oversee an effective anti-bribery program.
- 2. Perform a corruption and bribery risk assessment.** A comprehensive assessment of the potential bribery and corruption risks – both existing and emerging risks – associated with a company’s products and services, customers, third-party business partners, and geographic locations can serve as the basis for the compliance program. The risk assessment determines the areas at greatest risk for FCPA violations among all types of international business transactions and operations, the business culture of each country in which these activities occur, and the integrity and reputation of third parties engaged on behalf of the company.
- 3. Improve internal controls.** Internal financial controls should be developed, documented, maintained, and continually enhanced to help make sure that all payments are accurately recorded in the company’s books and records in accordance with applicable regulatory requirements. Special attention should be paid to those areas that may directly affect the anti-bribery and anti-corruption compliance program, such as procurement; securing vendors, agents, consultants, and other third-party business payees; and the offering and receiving of corporate gifts, entertainment, and travel.
- 4. Structure and define roles and responsibilities.** Although audit committee members, CEOs, CFOs, COOs, chief compliance and ethics officers, corporate general counsels, internal auditors, and more are liable under the broad reach of FCPA, a single individual – the chief compliance officer or other senior corporate official – should be assigned responsibility and accountability for FCPA efforts. This executive should be responsible for implementing a compliance program and policy and procedural oversight, as well as direct reporting authority to the board of directors or an appropriate subgroup, such as a compliance or audit committee.

- 5. Evaluate risk-based third-party due diligence.** This due diligence is necessary to help identify potential conflicts of interest and other adverse relationships that could put an organization at risk. The nature and extent of the investigative due diligence should be based on the third party's risk profile. Simple database checks might be sufficient due diligence for low-risk relationships. Remedial steps for higher-risk relationships may escalate due diligence and include reputation checks, site visits, forensic financial statement reviews, and investigative procedures outside the United States. They may also establish criteria for the termination of relationships.
- 6. Develop clear, practical, current, and accessible policies and procedures.** All organizations subject to the FCPA should clearly articulate a central policy against bribery and corruption that enforces a tone of compliance from the board and management. Procedures and processes should set forth permitted and prohibited conduct, supervisory and compliance approvals necessary for certain conduct, and documentation requirements for such approvals.
- 7. Document a detailed multiyear implementation plan.** Paper compliance is insufficient to meet compliance requirements of the FCPA. U.S. Deputy Attorney General Mark Filip issued a memorandum in 2008 on prosecuting business organizations that explicitly cautioned that a mere "paper program" lacking the necessary design, implementation, and review will not protect a company from prosecution.¹⁷ Organizations must embed anti-bribery policies and procedures throughout the business with an implementation timetable that, at a minimum, addresses the rollout of policies and procedures, anti-bribery training, program monitoring, the use of external assurance processes, and the frequency of compliance program reviews.
- 8. Define appropriate disciplinary procedures.** Organizations should define appropriate disciplinary procedures to address, among other things, violations by directors, agents, and business partners of the FCPA, the *U.K. Bribery Act*, and other applicable anti-corruption laws or compliance code.
- 9. Monitor and review.** To meet periodic review requirements under the U.S. Sentencing Guidelines, a company's compliance program and risks should be regularly monitored, reassessed, and adapted as necessary to help ensure the continued effectiveness of the company's internal controls, ethics, and compliance program measures such as its whistle-blower program and code of conduct. Companies should develop and document processes or controls that periodically assess the effectiveness of the compliance program, potential vulnerabilities, and employee compliance. Such processes might include periodic testing and validation, review of available metrics, and design of self-assessment forms and exercises performed under Step 2, the corruption and bribery risk assessment.
- 10. Train on an ongoing basis.** FCPA efforts at U.S. corporations with foreign operations tend to be ad hoc, leaving potential chinks in the armor that can be costly. It is very important that employees, particularly those in posts subject to



increased scrutiny due to heightened risk, are provided appropriate and ongoing training relative to FCPA policies. Larger organizations may also consider requiring or suggesting that business partners participate in anti-corruption training courses.

- 11. Establish a violation reporting system.** An anonymous reporting mechanism, or hotline, in the appropriate languages, by which employees can report compliance and ethics violations is a component of both the Principles of Federal Prosecution of Business Organizations (in the U.S. Sentencing Guidelines) and the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance. In addition, documenting investigation procedures, findings, and the company's response to violations – whether they include remediation activities, newly established internal controls, or new monitoring procedures – will go a long way toward satisfying regulators that the company has adequately addressed its FCPA issues. Company policy should define when potential infractions are to be voluntarily reported to regulators, if at all.
- 12. Review ancillary risk mitigation procedures.** All transactions at risk of potential bribery and anti-corruption pitfalls should be reviewed. These include standard provisions in contracts and agreements that provide for anti-corruption representations and undertakings relating to compliance with the FCPA, the *U.K. Bribery Act*, and other applicable anti-corruption laws; rights to conduct audits of the books and records; rights to terminate as a result of any violation of anti-corruption laws; and regulations or representations and undertakings related to such matters.
- 13. Complete independent compliance program testing annually.** Periodic testing and reviews should be performed annually or, at a minimum, every two years. Risk changes quickly, so companies benefit from an outside assessment that confirms the FCPA compliance steps being taken are appropriate and thorough. Larger organizations and those with higher risks should consider external verification or assurance of the effectiveness of anti-bribery policies.

Uncovering Blind Spots

Organizations that use these 13 steps as a guide when implementing their own anti-bribery measures are likely to uncover potential blind spots – areas where an organization is particularly vulnerable to FCPA risk. Evidence of any of the following red flags should trigger an increase in due diligence and investigation methods commensurate with the risk.

- Use of third-party agents, consultants, intermediaries, or distributors when performing business overseas;
- Use of third-party agents, acting on the company's behalf, who come in contact with foreign officials (customs agents, business licensing officials, government employees, and local political officials);
- Doing business in a high-risk FCPA industry such as aerospace and defense, telecommunications, oil, pharmaceuticals, or manufacturing;

Organizations conducting business in high-risk countries such as Brazil, Russia, India, China, Nigeria, Afghanistan, Venezuela, or the United Arab Emirates should increase their due diligence

- Conducting business in high-risk countries such as Brazil, Russia, India, China, Nigeria, Afghanistan, Venezuela, or the United Arab Emirates;
- Lack of a well-communicated anti-corruption policy that specifically addresses FCPA concerns to not only company personnel but also third-party agents;
- Ineffective or no procedures in place to monitor employees, third-party agents, and distributors for compliance with the FCPA, anti-bribery laws, or the company's code of conduct;
- Insufficient due diligence to scrutinize third parties that secure international contracts on the company's behalf.

High Stakes

In this era of heightened FCPA enforcement, the stakes are high. In a speech before the Washington Metropolitan Area Corporate Counsel Association on Jan. 26, 2011, Assistant Attorney General Breuer reiterated the DOJ's commitment to rooting out corporate misconduct. He said, "There are plenty of potential pitfalls for corporations that are not diligent about compliance."¹⁸ The surge in FCPA investigations of companies and individuals, escalating dollar amounts in corporate settlements, and enhanced international cooperation efforts among enforcement agencies have created an environment rife with compliance risk.

As long as bribery and corruption continue to undermine global business, corporations that operate in non-U.S. countries can expect to grapple with the ramifications of anti-bribery and anti-corruption compliance. Working through the 13 steps presented here should result in policies and practices that support a robust compliance program and an overall culture of ethical conduct that encourages individuals throughout the organization to act appropriately in all situations. Studies show that ethical corporations outperform unethical ones.¹⁹ As a result, efforts to implement and enforce anti-corruption initiatives not only minimize the risk of violations but also carry the very real prospect of creating financial reward in the end.

¹ FCPA Winter Review 2011, Miller & Chevalier Publications, Jan. 21, 2011, www.millerchevalier.com/Publications/MillerChevalierPublications?find=48909#corporations

² U.S. Attorney, Southern District of New York, press release, "Connecticut Investor Found Guilty in Scheme to Bribe Government Officials in Azerbaijan," July 10, 2009, www.justice.gov/criminal/fraud/fcpa/cases/docs/07-10-09bourke-verdict-sdny.pdf

³ U.S. Department of Justice Assistant Attorney General Lanny A. Breuer speech at the 24th National Conference on the FCPA in National Harbor, Md., Nov. 16, 2010, www.justice.gov/criminal/pr/speeches/2010/crm-speech-101116.html

⁴ Organisation for Economic Co-operation and Development (OECD) Phase 3 report, p. 10, Oct. 21, 2010, www.oecd.org/dataoecd/10/49/46213841.pdf

⁵ Andrew Weissmann and Alixandra Smith, "Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act," U.S. Chamber Institute for Legal Reform, October 2010, p. 2, www.jenner.com/files/tbl_s20Publications/RelatedDocumentsPDFs1252/3324/Restoring%20Balance_Proposed%20Amendments%20to%20the%20Foreign%20Corrupt%20Practices%20Act.pdf

⁶ Breuer speech.

⁷ OECD Phase 3 report, pp. 12, 39.

⁸ A copy of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* is available from the U.S. Government Printing Office at www.gpo.gov/fdsys/pkg/PLAW-111publ203/content-detail.html

⁹ A copy of the *U.K. Bribery Act* is available from the U.K. Ministry of Justice at www.legislation.gov.uk/ukpga/2010/23/contents

¹⁰ U.S. Department of Justice press release, "Daimler AG and Three Subsidiaries Resolve Foreign Corrupt Practices Act Investigation and Agree to Pay \$93.6 Million in Criminal Penalties," April 1, 2010, www.justice.gov/opa/pr/2010/April/10-crm-360.html; Daimler AG press release, "Daimler AG Reaches Settlement with U.S. Securities and Exchange Commission (SEC) and U.S. Department of Justice (DOJ)," April 1, 2010, www.daimler.com/dccom/0-5-7153-1-1285530-1-0-0-0-0-0-16694-0-0-0-0-0-0-0.html; and Daimler AG press release, "Daimler AG to Create New Board of Management Position for 'Integrity and Legal,'" Sept. 28, 2010, www.daimler.com/dccom/0-5-7153-1-1336069-1-0-0-0-0-0-9293-7145-0-0-0-0-0-0.html

¹¹ Alcatel-Lucent press release, "Alcatel-Lucent Welcomes the Settlements With U.S. Authorities Regarding Previously Reported Violations of Foreign Corrupt Practices Act," Dec. 27, 2010, www.alcatel-lucent.com/wps/portal/ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLd4x3tXDUL8h2VAQAURh_Yw!?!LMSG_CABINET=Docs_and_Resource_Ctr&LMSG_CONTENT_FILE=News_Releases_2010/News_Article_002305.xml

¹² Joe Palazzolo, "US Investigating Allianz Over Payments by Portfolio Company," WSJ Blogs, Dec. 22, 2010, <http://blogs.wsj.com/corruption-currents/2010/12/22/us-investigating-allianz-over-payments-by-portfolio-company/>

¹³ "JGC Confirms DOJ Investigation," The FPCA Blog, July 12, 2010, www.fcpablog.com/blog/2010/7/12/jgc-confirms-doj-investigation.html

¹⁴ U.S. Department of Justice press release, "Former Senior Executives of Latin Node Inc. Charged With Bribing Honduran Officials and Money Laundering," Dec. 20, 2010, www.justice.gov/opa/pr/2010/December/10-crm-1463.html

¹⁵ Gibson, Dunn & Crutcher, "2009 Mid-Year FCPA Update," July 7, 2009, www.gibsondunn.com/publications/pages/2009Mid-YearFCPAClientAlert.aspx

¹⁶ See Jonathan T. Marks, "Setting the Tone at the Top: Sustaining Ethical Behavior," Crowe Horwath LLP, 2009, www.crowehorwath.com/ContentDetails.aspx?id=934&terms=Tone%20at%20the%20Top

¹⁷ U.S. Department of Justice, "Principles of Federal Prosecution of Business Organizations," www.justice.gov/opa/documents/corp-charging-guidelines.pdf. See also the DOJ's press release, "Justice Department Revises Charging Guidelines for Prosecuting Corporate Fraud," Aug. 28, 2008, www.justice.gov/opa/pr/2008/August/08-odag-757.html

¹⁸ Remarks of U.S. Department of Justice Assistant Attorney General Lanny A. Breuer at the annual meeting of the Washington Metropolitan Area Corporate Counsel Association in McLean, Va., Jan. 26, 2011, www.justice.gov/criminal/pr/speeches/2011/crm-speech-110126.html

¹⁹ See, for example, "Business Ethics – General Public Trends," a survey conducted by the Institute of Business Ethics, 2008, www.ibe.org.uk/index.asp?upid=68&msid=12

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