Effectively Managing Corruption and Bribery Risk in Leading Global Markets
Advanced Practice Workshop

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AGENDA

Part I: Framework - U.S. Anti-Corruption Laws and Trends in Enforcement
Part II: Increasing International Cooperation in Anti-Corruption Enforcement
Part III: Emerging Risk Areas
Part IV: Anti-Corruption Scenarios

PART I

Framework - Anti-Corruption Laws and Trends in Enforcement
The Current Environment

- Over $1 trillion in bribes paid every year = ~ 3% of the world economy per the World Bank.
  - Over $2.5 billion in bribes every day.
- Over one in four people (28%) have acknowledged paying a bribe in the last year, according to the Transparency International Global Corruption Barometer.
- Corruption issues arise in almost all aspects of international business: obtaining contracts, onboarding contractors, distributors or suppliers, tax disputes, licensing, zoning, permitting, real estate transactions, customs clearances, etc.
- Corruption risks exist in every industry and geography.

US Foreign Corrupt Practices Act

- Accounting Provisions: The FCPA requires publicly traded companies (U.S. issuers) to maintain certain recordkeeping and accounting practices and internal controls to prevent and detect misconduct.

Anti-Corruption – 3 Key Elements

1. Direct bribery
2. Indirect bribery
3. Maintenance of accurate books & records and adequate internal controls
### Corporate Statistics

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<th>Year</th>
<th>2008</th>
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<td>$509</td>
<td>$260</td>
<td>$731</td>
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- **Alcoa**: DOJ and SEC charged the Pennsylvania-based aluminum giant with violating the FCPA, alleging that Alcoa had engaged in a multi-year scheme to bribe officials in Russia, Poland, and Mexico. The parent company and seven subsidiaries agreed to pay almost $76 million in criminal penalties and $31.5 million in disgorgement and interest. (4/9/14)
- **Hewlett-Packard**: DOJ charged the California-based company and four international subsidiaries with violating the FCPA, alleging that the subsidiaries had paid bribes to officials in France, Poland, and Indonesia. The parent company agreed to pay approximately $745 million, including approximately $250 million in disgorgement and interest. (1/9/14)
- **Marubeni Corporation**: SEC charged the Japanese trading firm with conspiracy to violate the anti-bribery provisions of the FCPA by paying over $600,000 in bribes to a Thai government official to secure a significant contract. The company also agreed to pay over $23 million in disgorgement and interest. (9/4/14)
- **Smith & Wesson Holding Corporation**: DOJ charged the Massachusetts-based firearms maker with violating the FCPA by paying over $600,000 in bribes to a Thai government official to secure a significant contract. The company also agreed to pay over $23 million in disgorgement and interest. (3/19/14)

### Case Study: HP Settlement 2014

**What Happened:**

- **Russia** (2000-2007): paid $1 billion in improper payments to Russian Federal Prosecutor's Office for 20-year period to government officials in Bahrain, including members of the royal family, to maintain a key source of business.
- **Poland** (2006-2010): agreed to pay over $600K in cash and gifts valued at over $30K, entertainment and travel to IT director of national policy agency, including HP computers, consumer electronics; failure to document accurately.
- **Mexico** (2008-2009): consultant with close government ties selected as "channel partner" to be paid million commission to consultant "channel partner" Pemex official allegedly paid $125,000 director of national policy agency, including HP computers, consumer electronics; failure to document accurately.

**Risks Identified and Key Lessons:**

- **FCPA Books and Records and Internal Controls**: increased regulatory focus on management and oversight of company policies and processes for boarding third parties and the review and authorization of transactions and payments.
- **Internal Controls**: Business Accountability for review and management of business processes. This means: 1) having a business purpose for hiring a third party; 2) knowing the qualifications, experience and reputation of a third party; 3) implementing proper management review and approvals for the transaction; 4) reviewing and documenting the deliverables; 5) obtaining and reviewing proof of performance and payment.
- **Training and Communications**: Employees in high risk positions – such as those interacting with a government customer – should receive targeted compliance training.

### Increased Focus on Enforcement

- **Anti-corruption enforcement is rapidly increasing and will not be going away**: Since 2005, DOJ has increased the number of FCPA prosecutors by over 400% (although a number have recently departed), with dedicated FB units of special agents and analysts located in Washington, D.C.
- **Numerous SEC regional offices maintain a dedicated FCPA Unit**: Average corporate fines and penalties of $193.3 million, significantly above the average of previous years due to three enforcement actions that included large sanctions.
- **Since 2009**: Over 230 enforcement actions initiated (DOJ – 143; SEC – 88). Over 28 companies and over 50 individuals charged thus far, generating over $2B in penalties.
- **Dodd-Frank Whistleblower Program**: received 149 FCPA-related complaints in 2013, a 23% increase year-over-year. Highest award paid to whistleblower is $14 million (although not FCPA-related).
- **Financial penalties have increased dramatically in recent years, resulting in billions of dollars paid to the U.S. treasury**.
- **However, more declinations that have been announced in recent years**.
  - Garth Peterson / Morgan Stanley declination announced by DOJ/SEC in April 2012.
Enforcement Activity & Trends

2014 Statistics, Trends, and Themes
- 16 enforcement actions initiated by the DOJ
- 3 enforcement actions initiated by the SEC
- 4 corporate resolutions
- Continued Increase in Penalties in Corporate Resolutions
  - Average 2013 corporate resolution > $80 million
  - The four corporate resolutions in 2014 thus far total approximately $582 million,
    with the four resolutions approximately $145 million/
  - New additions to the top 10 fines—
    - Alcoa $384,000,000, which includes the third largest disgorgement ($161,000,000);
    - Weatherford $232,800,000
- Continuing Focus on Pursuit of Individuals
  - The DOJ and SEC charged 11 different individuals with FCPA-related offenses.
  - Use of extradition, sealed indictments, wire taps, and other tools to obtain
    evidence and access to individuals.
  - Petro-Tiger Ltd (sealed charges revealed after two executives arrested getting off a flight at Newark International Airport).
  - May 19, 2014, SEC Chairman Mary Jo White: “I want to dispel any notion that
    the SEC does not charge individuals often enough or that we settle with entities in
    lieu of charging individuals. The simple fact is that the SEC charges individuals in
    most of our cases, which is as it should be.”

PART II

Increasingly International Nature of Anti-Corruption Enforcement

Transparency International Corruption Perceptions Index 2013
Countries Impacted by “Foreign” Corruption

- **Countries Affected**
  - Supply Side Countries – those who provide the bribes
  - Intermediary Countries – those involved in the movement and concealment of bribes
  - Demand Side Countries – those whose officials are bribed

- **Potential Violations**
  - Foreign Bribery (active bribery)
  - Receipt of Foreign Bribes / Solicitation (passive bribery)
  - Money Laundering
  - Domestic Bribery / Solicitation (passive bribery)
  - Other offenses (commercial bribery, fraud, tax violations, anti-trust / anti-competition, other regulatory violations)

The Future of International Anti-corruption Enforcement

- **Increased cooperation between U.S. law enforcement and foreign law enforcement**
  - Multilateral organizations (OECD, Europol, ACT-NET)
  - Bilateral arrangements (UK SFO, US-China Joint Liaison Group, ROMP)
  - Formal MLA requests and informal intelligence sharing
  - International training (e.g., February 2013 conference in Washington, DC with over 130 prosecutors from 30 countries)
  - United States v. Jeong: The Fifth Circuit held that the OECD Anti-Bribery Convention does not bar multiple prosecutions for the same conduct in different nations.

- **Coordinated investigations among law enforcement**
  - Total S.A.: Paid $389 million in penalties and disgorgement to settle coordinate enforcement by U.S. and French authorities.
  - Archer-Daniels Midland: U.S. settlement credited payment made to German law enforcement.

- **Collateral Consequences**
  - Debarment
  - Subsequent prosecutions of individuals and companies

The Future of International Anti-corruption Enforcement

- **Increased Foreign Enforcement**
  - Between 1999-2013, Germany brought 97 bribery cases (2nd in the OECD; the US has brought 236 in that period).
  - In 2013, the World Bank publicly debarred 47 entities and 10 referrals have led to criminal investigations by national authorities.
  - On February 3, 2014, the European Commission released the European Union Anti-Corruption Report, an analysis of corruption across EU member states, including steps taken to prevent and fight corruption.
  - On April 15, 2014, the European Parliament adopted the Directive on Disclosure of Non-Financial and Diversity Information by Certain Large Companies and Groups, under which covered companies in the EU will have to disclose information on their policies, risks and resolutions regarding various issues, including anti-bribery and corruption issues.
  - In March and May of 2014, the African Development Bank Group’s Integrity and Anti-Corruption Department announced settlements with the four multinational companies who were part of the infamous TSKJ Bonny Island, Nigeria joint venture that resulted in some of the largest FCPA penalties.
  - The Department stated that the funds from the penalties will be returned to Nigeria to fund anti-corruption efforts.
  - The Bank also debarred several foreign-based joint ventures associated with the TSKJ joint venture, with the debarments coordinated among the European Bank for Reconstruction and Development, Inter-American Development Bank Group, and the World Bank Group.
International Anti-Corruption Legislation & Enforcement

**United Kingdom**
- First prosecution under 2010 UK Bribery Act occurred in October 2013.
- During 2014, the U.K. Serious Fraud Office announced numerous investigations into foreign bribery of major U.K. companies.
- SFO has called for amendment to the UKBA that would expand the law to cover failure to prevent all financial crime, not just bribery.

**India**
- Campaign against “Tigers and Flies”.
- Authorities have widening expansive state audit of 14 major state-owned enterprises.
- China has introduced a corruption blacklist of drug makers and medical device manufacturers who have paid bribes, effective as of March 1, 2014.
- Numerous investigations have come under the scrutiny of Chinese regulators, including JLT Specialty Ltd., which paid bribes in exchange for a $150 million contract for light attack planes.

**Brazil**
- Clean Companies Act: Provides for administrative and strict liability for companies that make improper payments to government officials. Effective January 29, 2014.
- Several states and municipalities have issued regulations implementing the Act.
- Brazilian government issued detailed guidelines governing public officials’ acceptance of tickets to World Cup events.

**Germany**
- Corporate Criminal Code: New legislation could provide for criminal sanctions for employees of a company who authorize or fail to prevent foreign bribery.
- MAN SE, a truck and diesel engine maker majority-owned by Volkswagen AG, agreed to pay $750 million for bribing foreign officials.
- AIC, the Anti-Corruption Bureau, fined a German exporter $50 million for paying bribes in Vietnam.

**China**
- Campaign against bribery of government officials has been under President Xi Jinping’s “austerity measures” targeting bribery.
- SFO has called for amendment to the UKBA that would expand the law to cover failure to prevent all financial crime, not just bribery.
- JLT Specialty Ltd., the U.K. Financial Conduct Authority (“FCA”) fined Besso £315,000 for anti-corruption systems and controls failures on March 17, 2014. Besso was fourth in a series of insurance companies fined by the FCA for failures to maintain adequate controls.
- **Besso Ltd.**
- SFO has called for amendment to the UKBA that would expand the law to cover failure to prevent all financial crime, not just bribery.
- In December 2013, the FCA fined the insurance brokerage and risk management company £1,876,000 for improper compliance. Notably, JLT had robust anti-bribery and anti-corruption policies, approved by external counsel, but allegedly failed to adhere to its own policies.

**Indonesia**
- **Lokpal and Lokayuktas Bill**: The 2011 bill was finally passed in December 2013.
- **Companies Act**: Signed on August 29, 2013, the bill requires directors to certify annually that their company had implemented proper internal financial systems and controls for preventing bribery. A recent decision by a Delhi court in the case of INOX shows the new law is already having a deterrent effect.
Canada: amended its Corruption of Foreign Public Officials Act (“CFPOA”) in 2013 to increase the maximum penalty under the Act to 14 years’ imprisonment.
- Also created an offence for any person who engages in improper accounting practices in order to commit an offense under the CFPOA or to conceal such a violation.
- Amendments also expanded jurisdiction to include offenses committed outside of Canada.
- On May 23, 2014, Nazir Karigar, an agent of Cryptometrics Canada, was sentenced to 3 years in prison for conspiracy to bribe officials of Air India and an Indian Cabinet Minister in order to secure a multimillion dollar supply contract for facial recognition software. Karigar is the first individual to be sentenced to imprisonment under the CFPOA.
- On June 4, 2014, Canadian police announced that 3 more individuals had been charged under CFPOA in the same matter, 2 of whom are US nationals, and 1 of whom is a UK national.
- Two former executives of SNC-Lavalin were also charged in early 2014 for bribing Libyan government officials, stemming from the World Bank investigation.

Russia:
- In January 2014, Russia implemented a new regulation in January 2014 requiring state officials to declare and surrender any received gifts of unknown value or exceeding RUR 3,000 (approx. $88) in value to their government organizations.
- Russia recently implemented changes to its Code of Administrative Offenses, broadening responsibility for violations of state procurement laws.
- In January 2014, the head of the Russian Investigative Committee reported that more than 28,000 corruption cases were filed in 2013 (10,000 more than in 2012) – of these, $10 billion in assets was seized with an estimated total pecuniary loss of RUR 13 billion (approx. $381 million).
- The Russian Attorney General’s Office stated that in 2013, administrative anti-corruption enforcement against organizations doubled from 2012, and the aggregate amount of fines imposed on companies more than tripled.

Turkey:
- Current rapidly-unfolding and wide-ranging corruption scandal that has the power to unseat the current ruling party.
- $4.5 million in cash discovered stuffed in shoe boxes at the home of the chief executive of a state-owned bank.
- Arrests of the sons of three Cabinet ministers, who quickly resigned, and a billionaire construction magnate with close ties to the prime minister.
- Nearly 2,000 in the police force, including 15 provincial police chiefs and the deputy head of the national police, have been removed or reassigned.

Norway:
- Kongsberg Gruppen AS: In February 2014, the Norwegian defense company and one of its employees were charged by the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime with violating Norwegian anti-bribery laws relating to Kongsberg’s sales of communications equipment to Romanian officials.
- Yara International ASA: In January 2014, Yara, a Norwegian fertilizer company, settled charges with the Norwegian authorities for agreeing to pay approximately $12 million in bribes to government officials in Libya, Russia and India. Yara paid almost $45 million in the settlement, the largest corporate fine in Norwegian history.
- This was the largest cross border corruption enforcement action undertaken by Norwegian authorities.
- Four former Yara executives have also been indicted for agreeing to pay these bribes, including the company’s former CEO, COO, and CLO.
- Trial of the individual executives are set for early 2015.
PART III

Best Practices in Assessing Global Corruption Risk and the Importance of Compliance

Importance of Anti-Corruption Compliance

- Protect long-term access to global markets and financing.
  - Violation of anti-corruption laws may result in a suspension of the right to do business in certain countries or with certain entities (such as World Bank, European Union, United States).
  - Sophisticated purchasers and most underwriters focus on compliance as part of standard due diligence in acquisitions and joint ventures.
- Protect company from contractual liability for breaching anti-corruption provisions.
- Protect against enforcement actions by the U.S. government.
- Protect company and employees from serious criminal and civil penalties, as well as reputational harm.
  - Monetary penalties and prison sentences may be imposed for corruption violations.
  - Individuals prosecuted in the United States, U.K., China and many other countries.

Intel's Anti-Corruption Compliance Program
FCPA Resource Guide: Hallmarks of an Effective Compliance Program

- Hallmarks of an Effective Compliance Program:
  - Commitment from Senior Management
  - Clearly Articulated Policy Against Corruption
  - Code of Conduct and Compliance Policies and Procedures
  - Oversight, Autonomy, and Resources
  - Risk Assessment
  - Training and Continuing Advice
  - Incentives and Disciplinary Measures
  - Third-Party Due Diligence and Payments
  - Confidential Reporting and Internal Investigation
  - Continuous Improvement: Periodic Testing and Review
  - Mergers and Acquisitions: Pre-Acquisition Due Diligence and Post-Acquisition Integration

Source: FCPA Resource Guide, Pages 56-62

Compliance Officers – Independent and Strong

In evaluating an effective compliance program, the DOJ and SEC consider whether:

- A company assigns responsibility for the oversight and implementation of a company’s compliance program to one or more specific senior executives within an organization.
  - Whether those individuals have appropriate authority within the organization, adequate autonomy from management, and sufficient resources to ensure that the company’s compliance program is implemented effectively.

- The Compliance Officer have adequate autonomy generally, including direct access to an organization’s governing authority, e.g., the board of directors and committees of the board of directors (e.g., the audit committee).

- The reporting structure based on the size and complexity of an organization.
  - Moreover, the amount of resources devoted to compliance will depend on the company’s size, complexity, industry, geographical reach, and risks associated with the business.

Corruption Chokepoints

- Understand the types and frequency of contacts that all of your business lines have with all different types of government entities, officials and employees.

- How does your business interact with government?
How to stop a bribe? Stop the money.

- How does a bribe happen?
  - An employee must be able to extract money or assets from the company in an unauthorized manner.

- Where does money come from to pay a bribe?

Guidance from DOJ and SEC...

- “Devoting a disproportionate amount of time policing modest entertainment and gift giving instead of focusing on large government bids, questionable payments to third party consultants, or excessive discounts to resellers and distributors may indicate that a company’s compliance program is ineffective.”
  - FCPA Guide, Page 58

Accurate Books and Records and Effective Internal Controls

- Maintain accurate books and records
  - No false, misleading, or incomplete entries.
  - No “off the books” accounts or assets.
  - Acknowledge inconsistencies and correct errors in accordance with the law.

- Establish effective internal controls... but what are internal controls?
  - Anti-Corruption Policies and Procedures
  - Business Process and Procedures
  - Business and Third Party Risk Assessments
  - Education and Communication
  - Monitoring and Audit
  - Enforcement and Discipline
Due Diligence

- "As a company’s risk for FCPA violations increases, that business should consider increasing its compliance procedures, including due diligence and periodic internal audits. When assessing a company’s compliance program, DOJ and SEC take into account whether and to what degree a company analyzes and addresses the particular risks it faces.” FCPA Resource Guide, Page 59

- "Risk-based due diligence is particularly important with third parties and will also be considered by DOJ and SEC in assessing the effectiveness of a company’s compliance program.” FCPA Resource Guide page 60

- Identify Third Parties that present greatest risk to your company:
  - How many third parties are you using — who is acting on your behalf?
  - How are Third Parties qualified for experience and performance?
  - Are you entering new markets or business lines using Third Parties in high risk countries?
  - Do you know if those Third Parties are interacting with government officials?
  - What are their activities/services? Where are those activities/services occurring?
  - Are the Third Parties actively managed? Are deliverables and payments reviewed and approved?

Due Diligence

- What does risk-based due diligence look like to you?

- What are the challenges of implementing risk-based due diligence

Example of Due Diligence Overview

Anti-Corruption Due Diligence Overview

Program Objectives:
1. Ensure third parties working with them are accountable and will comply with applicable Anti-Corruption and Ethical Compliance Policies and ethical expectations
2. Identify and assess potential ethical and corruption risks among engagements with third parties
One Aspect of the Rules: Gifts, Travel & Entertainment

- “Gift giving can be appropriate in numerous circumstances.”
- “Small gift or token of esteem or gratitude is often an appropriate way for business people to display respect for each other.” – FCPA Resource Guide, Page 15
- Liability does not depend on the amount, but on the intent of the giver.
- Enforcement of the FCPA should not cause companies to prohibit gifts, travel, or entertainment outright, but only to prohibit the “corrupt” provision of gifts that are designed to “improperly influence.”
  - “Items of nominal value, such as cab fare, reasonable meals and entertainment expenses, or company promotional items, are unlikely to improperly influence an official, and, as a result, are not, without more, items that have resulted in enforcement action by DOJ or SEC.” – FCPA Resource Guide, Page 15

Gift Giving Best Practices

- Permissible under local law, and types of activities that are legal and customary.
  - Reasonable in value, not lavish
  - Provided openly and transparently
- Pay the provider directly.
- Consistent with your company’s Code of Conduct and gift giving policy, whether acting directly or through a Third Party.
- Appropriate for the circumstances, such as a gift-giving holiday or a commemorative event.

Evolving Compliance Standards

- Key Takeaways
  - No compliance program will stop everything, but an effective program should identify issues.
  - Engage your employees and make it their responsibility.
  - What was acceptable last year will not be acceptable five years from now.
  - Significant emphasis by US government authorities on creating, implementing and maintaining compliance programs that:
    1. Prevent;
    2. Detect; and
    3. Remedy corruption problems.
PART IV

Worst Case Compliance Scenarios:
Designing an Anti-Corruption Program, Risk Identification and Investigative Strategies

The Best Part of a Worst Case Scenario…

- It is September 15, 2014, and you are the newly hired Chief Compliance Officer of the Super Company Creating Excitement (SCCE) with double your previous salary and your choice to live anywhere in the world.
- SCCE is a U.S. company traded on the NYSE, which is in the "ball bearing" manufacturing business.
- SCCE is a well-established company, management is trying to enter into high-growth mode.
- Up until your hire, there have been minimal anti-corruption controls, no formal anti-corruption program and no due diligence of third parties.
- The former Chief Compliance Officer was fired for self-dealing.

But it gets worse…

- SCCE’s business model is the following:
  - Purchases metals from two companies – a state-owned entity in China ("Chinese SOE") and an Australian mining company operating in Indonesia and Chile.
  - Purchases manufacturing equipment from California and Finland.
  - Manufacturing plants located in Malaysia, India and Brazil.
  - Uses distributors and agents to sell to companies around the world, including France, Argentina, Mexico, South Africa and Egypt.
  - Uses consultants to provide insight into the entry of new markets, including Vietnam, Angola, Czech Republic and Ireland.
  - Uses direct sales model in United States, Canada, Norway and Italy.
Where are your risks? (Issue Spotting)

- Government Touch Points?

- Greatest Risks?

First 90 days?

- As the newly established compliance lead, on Monday September 15, you sit down at your new desk overlooking the beautiful scenery and contemplate what comes next.
- What would you like to accomplish within the first 90 days?
- What steps would you take to accomplish them?

Scenario: Part I (old complaints)

- On Tuesday, September 16, as you are reviewing the old emails sent to the previous chief compliance officer, you come across three that appear to be more than the typical complaints:
  - Allegation that the direct sales force in Italy is giving luxurious designer gifts to all of its customers (both public and private) before awards are made on pending tenders.
  - Allegation that the consultant being used to introduce SCCE’s products in Vietnam is the brother-in-law of the Vietnamese Minister of Commerce.
  - Allegation that the distributor in Argentina is demanding additional marketing funds and discounts because it is about to bid on an upcoming public tender.
  - Allegation that the country manager in Brazil has hired local lawyers to facilitate the licensing and permits for an expansion of the manufacturing plant.
- How do you prioritize your review and why?
Scenario Part II (Troubles in China)

- On Wednesday September 17, you see in a Chinese newspaper that the Vice President of “Chinese SOE” is being examined for corruption. One of his many homes has been raided.
- The Shenyang AIC raids a multi-national company (“Bad Company”) who also purchases iron ore from Chinese SOE; it is discussed in the press that Bad Company used a travel agency (“Bad Travel Agency”) to pay bribes to Chinese SOE.
- Nothing has been identified publicly that SCCE is involved, but SCCE also uses Bad Travel Agency to pay for its employees to travel around China and to organize conferences for those in the industry about the importance of proper mining techniques.
- Should you be concerned? If so, what would you do?

Scenario – Part III (Troubles in India)

- On Thursday, September 18, 2014, you are at a conference discussing compliance issues, when your country manager in India calls to tell you that there was a fire in your manufacturing plant, killing 100 people.
- He also tells you that, before you were hired, there was a whistleblower who had informed the previous Chief Compliance Officer that a fire inspector had claimed to have found multiple violations of building codes.
- He also mentions that the plant manager paid $50,000 to a “consultant,” who was the fire inspector’s brother-in-law, to assist in negotiating a settlement. In the end, no formal findings of fire code violations were found.
- What do you do?

The end of a bad week...

- On Friday, September 19, your general counsel receives a letter from the FCPA Unit of the Fraud Section of DOJ asking about potential issues in China, India and Argentina. They ask you to come in to discuss the issues within the next two weeks.
- What do you do?
Conclusions / Wrap-Up / Questions

- Employee Engagement and Responsibility
- Corruption Chokepoints
- Evolving Requirements for an Effective Compliance Program

Our Offices