Compliance in M&As and JVs

- How M&As have evolved in terms of compliance
- Compliance Due Diligence is a must, essential
- Law 27401, art. 3
- Ongoing and comprehensive DD approach
Compliance DD: Key Challenges

- Compliance culture at the client and target company: is it there?
- Risk assessment approach:
  - Preliminary
  - Pre-closing
  - Closing

Cultural Issues in Compliance DD of Cross Border Transactions

- Standard steps: comparing Code of Conduct of Target and Acquirer
- Reviewing target procedures, policies and programs.
- And if not????
- In the absence of code of conduct, much more time will have to be spent in coming to know target’s culture
- External interviews and site visits
Compliance DD: Major Compliance Issues to Check

- Defining scope of compliance DD
  - Industry
  - Market
  - Jurisdictions
  - Parties/entities involved
  - Third parties
  - Target compliance program?

Third Party Due Diligence

- International laws seek to prevent companies paying bribes through intermediaries
- Law 27.401 holds companies liable for 3rd party actions in breach of the law
- Contracts to be scrutinized: Risk approach
  - Public officials
  - Country risk – CPI
  - Industry
  - Contract value
  - Nature of services
Does Target Size Matter??

- Many companies determine level of DD based on size operation or stake of participation
- Eg. M&A of renewable energy projects: Issues are the same for a 1 MW acquisition and a 50 MW acquisition
- Seller DD

Impact of Compliance DD Findings
- NO GO
- Restructure transaction
- Price reduction
- Conditions Precedent
Managing and Mitigating Compliance Risks

• Tailored forensic tools
• Contractual protections
• Insurance and guarantees
• Post-closing monitoring and review
• Compliance integration program

CONCLUSION

• Compliance is a MUST
• On-going tailored risk approach
• Compliance as a way to conduct business safely
Q&A
THANK YOU