Unfortunately, as corrupt practices have grown more complex and sophisticated, uncovering potential Foreign Corrupt Practices Act (FCPA) risks is no longer as simple as looking for large cash payments made directly to government officials. When one considers the wide range of transactions that may pose increased risks, it is not surprising that a robust system of controls and proactive detection procedures is often required to prevent the concealing of bribes and the use of fraudulent accounting practices prohibited by the FCPA.

Many recent FCPA violation disclosures involve complicated webs of third parties, charities, sales agents, and joint ventures. Equipped with a little knowledge of these areas and some targeted transaction testing, companies can take steps to help minimize their risk of widespread FCPA violations. The list below, while by no means exhaustive, includes some of the more recent examples of schemes and how they’ve been used to transfer funds that may ultimately end up as illegal bribes:

**Agent or Third Party Representative Payments:**

- **Commission Payments** – Payments may exceed the stated commission rate or may be paid on goods that were never delivered to, or paid for by, the legitimate customer.
- **Expense Reimbursements** – Reimbursements may occur for items that are poorly documented, did not obtain proper prior approval, or that violate contract provisions.

**Consultant Payments:** These payments, often of a large dollar amount, to consultants, lobbyists, or other professional service providers (including attorneys and accountants) may seem to lack substance or have very little supporting documentation.

**Contributions to Charitable or Political Organizations:**

These foreign organizations may be directly or indirectly owned or operated by government officials or their relatives and the government officials may receive some direct benefit from these organizations.

**Direct Payments or Reimbursements to Foreign Officials:**

- **Hotel Expenses or Airline Tickets** – In many cases, supporting documentation for reimbursements made directly to the foreign official may be minimal or completely lacking. Per diem-type payments to government officials should be avoided.
- **Education or Healthcare Reimbursement** – Payments for education or health care expenses for foreign officials, or their relatives, can be very difficult to detect and thus may present a high risk for FCPA violations.

**Employee Expenses:**

- **Large Entertainment Expenses** – Employees may spend an unreasonable amount to entertain foreign officials or to provide extravagant gifts. Companies might consider subjecting these types of expenses to pre-approval.
- **Gifts or Gift Card Purchases** – Employees, especially sales employees, may purchase gifts or gift cards for foreign officials to influence their decisions. Companies might consider limiting these to minimal dollar values or to promotional type items carrying the company’s logo.
- **Travel or Cash Advances** – Advances paid to employees traveling abroad pose an especially high risk. Proper tracking of these advances can help minimize this risk.

**Logistics and Shipping:** Shipping and forwarding companies could be involved in making improper payments to expedite the flow of goods or reduce duties or taxes. Fraudulent payments could be inappropriately recorded as excessive shipping or other processing charges.

**Facilitation Payments:** These payments could be made for a variety of reasons, including obtaining or expediting permits, licenses, and visas. In many cases, facilitation payments are violations of local laws and should be prohibited. In addition, large facilitation payments made to certain officials could be considered potential violations of the FCPA.

**Rental Expense:** A portion of the rental fee for a building or equipment may be paid to a government official or intermediary. The rental fee may be in excess of market rates for a particular area.

(continued on page 5)
Eight Common Bribery Traps (continued from page 3)

Pinpointing fraudulent activity in these transactions is a challenging undertaking, but a robust system of FCPA-focused internal controls that are overseen by well-trained staff can prove to be valuable to the effort. If companies take precaution to “look before they leap” and learn where to look, they can greatly enhance their odds of preventing and detecting potential violations of the FCPA.

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The views expressed in this article are those of the author and do not necessarily represent those of Deloitte Financial Advisory Services LLP.

Corruption in Argentina (continued from page 4)

Testimony the payment of illegal commissions, although he did not know to whom they were made.

Conclusion

The continuing growth of the Argentine economy may bring business opportunities that may find weak enforcement and regulatory agencies, a slow criminal judiciary, and a perceived corrupt political class. The schemes to manage public money are cumbersome, since each public trust fund and state-owned company applies different criteria and rules.

In this context of weak domestic enforcement of bribery laws, “knowing your intermediaries” from an independent source may play an important role in protecting your investments from global legal risks in the forthcoming years.

Nicolás Dassen (nicolas@jorge-dassen.com) represented Argentina as a lead expert before the Follow Up Mechanism on both the Inter American Convention against Corruption and the OECD Working Group on Bribery against Foreign Public Officials in International Business Transactions. Guillermo Jorge (guillermo@jorge-dassen.com) was a Reagan-Fascell Democracy Fellow, National Endowment for Democracy, and joined the UN experts group for the drafting of a technical guide to promote the implementation of the United Nations Convention against Corruption. Jorge & Dassen, Abogados y Consultores is the TRACE partner firm in Argentina.

Articles & Publications

Last year, the Center for International Private Enterprise (CIPE) provided financial support for a case study that examines the evolution of TRACE from its inception in October 2001 through the end of 2006. The study offers a model of a successful non-profit and identifies lessons learned along the way. It was prepared by Ben Atkins, an executive with a major multinational and a member of the TRACE Board of Directors, and Stephen Wrage, a professor at the U.S. Naval Academy and President of the TRACE Institute. To download a copy of CIPE REFORM Case Study No. 0603, “Building a Successful Non-Profit Organization: The TRACE Experience,” visit www.cipe.org.

The following articles have been posted to the ‘In the News’ section of the TRACE website:


TRACE International, Inc. was featured in the April 2007 issue of Working Mother magazine. In a focus piece on the Best Small Companies of 2007, Alexandra Wrage, President of TRACE, was one of three entrepreneurs honored for “turn[ing] their unique ideas into businesses that make a real difference – in their communities, across the country and worldwide.”

A new book on bribery and extortion, authored by Alexandra Wrage, will be published by Praeger Greenwood in September. Bribery and Extortion: Undermining Business, Governments, and Security uses case studies from around the world to help illustrate the nature of the problem and efforts at combating it. For more information or to order a copy, please visit www.greenwood.com/catalog/C9649.aspx.