

May 15, 2008

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## Navigating Anti-Bribery Restrictions to Win Business in the Global Marketplace

*This memorandum appeared as a published article in conjunction with the International Telecommunication Union's Africa Telecom 2008 conference held in Cairo, Egypt on May 12 - 15, 2008. This memorandum represents the views of the authors and does not imply any endorsement by the International Telecommunication Union.*

**A**nti-corruption and anti-bribery initiatives are the current focus of regulators around the globe. Aggressive enforcement of the United States Foreign Corrupt Practices Act<sup>1</sup> ("US-FCPA") by U.S. regulators, including enforcement actions against companies based outside of the United States for conduct outside the United States, is changing how corporations around the globe do business. Increasingly, non-U.S. regulators have taken the US-FCPA and the aggressive enforcement approach in the U.S. as a model. The efforts of the signatories to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention")<sup>2</sup>, the United Nations Convention Against Corruption (the "UNCAC")<sup>3</sup> and the African Union Convention on Preventing and Combating Corruption (the "AU Convention")<sup>4</sup> demonstrate the extent to which the global attitude toward corruption is changing.

Modern companies must understand and internalize a basic fact -- bribery is not just someone else's problem or risk. There are many ways that a company can find itself caught up in bribery in the context of what may seem an ordinary transaction. This includes public and private companies as well as principals and agents. Whistle-blowers, auditors, local regulators, and even disappointed bidders are but some of the potential sources of allegations that can lead to expensive and time-consuming enforcement investigations and proceedings. Exposure is particularly pronounced for firms that must deal with government officials in the context of state-run or state-owned businesses, as counter-parties or joint venturers, or in the context of permitting, licensing, customs or tax issues. Only by constantly assessing relationships and transactions can companies protect themselves.

<sup>1</sup> Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, *et seq.*

<sup>2</sup> [http://www.oecd.org/document/21/0,2340,fr\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,2340,fr_2649_34859_2017813_1_1_1_1,00.html)

<sup>3</sup> [http://www.unodc.org/pdf/corruption/publications\\_unodc\\_convention-e.pdf](http://www.unodc.org/pdf/corruption/publications_unodc_convention-e.pdf)

<sup>4</sup> [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Convention%20on%20Combating%20Corruption.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf)

The risk of regulatory exposure is high for global companies operating in the telecommunications industry in Africa.

Telecommunications services are often provided by governmental Postal Telephone and Telegraph agencies ("PTTs") or government monopolies. Companies often negotiate and transact with foreign government officials. Adding to the risk, the economies of many African nations are viewed by many in the international community as vulnerable to corruption. Several countries in the region with a high proportion of state-run industries or natural resources have been identified as highly susceptible to corruption.<sup>5</sup>

Negotiating with a PTT or government-run telecommunications monopoly poses unique difficulties, such as requirements that one use local agents or subcontractors, which can make compliance review more difficult. Cultural expectations regarding the exchange of gifts or contributions may result in significant exposure for the company. These challenges are made more difficult by virtue of the fact that the playing field is not level; companies competing for business are not subject to the same set of restrictions when it comes to the manner in which negotiations can move forward. While the challenges can seem daunting, companies that establish and maintain a robust anti-corruption compliance program can do more than simply compete, they can succeed.

This article will discuss anti-bribery regulation, using the US-FCPA as a model and reference point for comparable anti-bribery provisions that impact cross-border business. In addition, the article will identify "red flags" that act as warning signs of potentially problematic relationships or transactions. Finally, the article will discuss strategies a company can use to mitigate regulatory risk while at the same time positioning itself to win business.

## I. The Foreign Corrupt Practices Act and Comparable Anti-Bribery Provisions

Regardless of one's view of the aggressive approach undertaken by U.S. regulators with respect to the jurisdictional reach of the US-FCPA, the statute has served as a model for increasingly stringent international anti-corruption standards around the globe.

### A. The US-FCPA

The US-FCPA has two substantive prongs: the anti-bribery provision and the books and records and internal controls provisions.

The anti-bribery (or foreign payments) provision, enforced by the U.S. Department of Justice ("DOJ") and the U.S. Securities and Exchange Commission ("SEC"), makes it illegal to make payments directly or indirectly to foreign officials, officials of foreign political parties, or any other person acting as a conduit for payments to foreign officials or political parties for the purpose of obtaining or retaining business.

The books and records and internal controls provisions, under section 13 of the Securities Exchange Act of 1934<sup>6</sup> give the SEC a potent and easily-applied tool for requiring issuers to

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<sup>5</sup> Transparency International provides detailed analyses of geographic regions that can be very helpful as an initial step for global corporations in analyzing risk. The *2007 Corruption Perception Index Regional Highlights: Africa* can be found at [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2007/regional\\_highlights\\_factsheets](http://www.transparency.org/policy_research/surveys_indices/cpi/2007/regional_highlights_factsheets).

<sup>6</sup> 15 U.S.C. § 78m (b)(5); § 78m (b)(2)(B); and § 78m (b)(2)(A)

provide full and fair disclosure. These provisions require companies who file reports with the SEC to maintain records that accurately reflect transactions and the nature and quantity of corporate assets and liabilities.

1. Who is subject to the US-FCPA?

The US-FCPA has incredibly broad reach and incorporates both territorial and nationality jurisdiction principles. It is most useful to view the jurisdictional reach of the statute with respect to three categories: issuer; domestic concern; and foreign national or business.

a) An issuer is a any (U.S. or non-U.S.) corporation that has issued securities registered in the U.S. or that is required to file periodic reports in the U.S.

b) A domestic concern is any individual who is a citizen, national, or resident of the U.S., or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the U.S., or which is organized under the laws of a State of the U.S., or a territory, possession, or commonwealth of the U.S.

It is important to note that issuers and domestic concerns may be held liable for any act in furtherance of a corrupt payment taken outside the U.S. A U.S. company may be held liable for conduct authorized or undertaken by employees or agents outside the United States even if no U.S. persons participate and even if the money used comes from outside the U.S. In addition, U.S. parent corporations can be held liable for the acts of foreign subsidiaries.

c) A foreign national or business.

A foreign national or business is subject to the US-FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payments to take place within the U.S.

2. What are the consequences of violations of the US-FCPA?

Violations of the US-FCPA carry enormous consequences for both companies and individuals. Criminal penalties administered by the DOJ include fines per violation of up to \$2 million for corporations and \$250,000 for individuals. These fines may be increased by up to twice the amount of the benefit the violator sought to obtain through bribery. Individuals face up to five years imprisonment once convicted of violating the anti-bribery provision. A company's willful violation of the books and records provisions can result in fines up to \$25 million or twice the amount of the gain resulting from the offense. Individuals can be fined up to \$5 million or imprisoned for up to twenty years for willful violation of the books and records provisions. The SEC has become increasingly aggressive in seeking penalties and disgorgement. In addition to penalties and disgorgement of profits, companies may find themselves barred from U.S. government contracts.

Recent settlements of US-FCPA enforcement actions have revealed a trend of using deferred prosecution agreements with the DOJ as well as SEC settlements to impose stringent conditions under which the company must operate going forward, including the imposition of monitorships.

Pursuant to such an agreement, a company is subject to oversight and review by an independent monitor who can often dictate the manner in which the company implements its anti-bribery internal controls. This monitor reports back to regulators regarding the company's conduct and commitment to its anti-bribery program. The company pays for all costs associated with the monitor.

### 3. What are the elements of the US-FCPA anti-bribery provision?

The anti-bribery prong of the US-FCPA includes the following:

- a) A payment, offer or authorization to pay money or anything of value, directly or indirectly;

A company or individual can be liable even for *de minimis* payments and for payments made by agents, consultants, or other intermediaries or third-parties acting on the company or individual's behalf. The involvement of consultants or agents is of particular concern in the telecom industry where such relationships are often necessary to the negotiation process. PTTs often refuse to negotiate with foreign companies unless a local person or company acts as agent or intermediary.

- b) To a foreign official, foreign political party or party official, or to any candidate for foreign political office;

The definition of foreign official has been construed very broadly. A foreign official includes any officer or employee of a foreign government, a public international organization, any department or agency of a foreign government, or any person acting in an official capacity. Enforcement actions have been based on payments to officials ranging from the president of a country to low-level managers employed at state-run telecommunication providers.

- c) Made with a corrupt motive;

Actual knowledge is not required to result in liability. Liability can be based on whether the person knew or should have known about the circumstances underlying the improper payment.

- d) For the purpose of influencing an official act or decision of the recipient;

The US-FCPA does not require that the corrupt payment or offer to pay actually succeed in bringing about the intended result. The intent to influence is sufficient.

- e) In order to assist in obtaining or retaining business or securing an unfair business advantage.

In addition to obvious examples of problematic payments, such as bribes paid to a government official in order to win a particular contract, examples of other types of payments that have received scrutiny include:

- i. Paying for schooling or for scholarships for the children of foreign officials;
- ii. Entering into business ventures with foreign officials or their relatives;
- iii. Purchasing or renting properties from foreign officials or their relatives;
- iv. Hiring companies or individuals closely associated with foreign officials or their relatives; and
- v. Travel and entertainment expenses.

#### 4. A trap for the unwary: payments excepted from the US-FCPA

The US-FCPA contains an exception for facilitating payments. These are payments made to expedite or to secure the performance of a routine governmental action by a foreign official. Such payments can include:

- a) Obtaining certain permits or licenses to do business in a foreign country;
- b) Processing governmental papers, such as visas and work orders;
- c) Scheduling inspections associated with contract performance or transit of goods across country;
- d) Providing services such as telephone, power and water supply, and loading and unloading cargo.

U.S. regulators have taken a very narrow view of what constitutes a facilitating payment. Parties should carefully analyze such payments before relying on this exception. Many international conventions and laws, including the OECD Convention, forbid facilitating payments.

#### 5. The effect of the books and records and internal controls requirements

By mandating that companies accurately identify and account for all transactions, including illegal payments, the US-FCPA adds a powerful weapon to the SEC's enforcement arsenal, the purpose of which is deterrence and the assurance that shareholder disclosures remain accurate. Even if an independent auditor is not able to detect a bribe, or there are difficulties encountered in prosecuting a particular scheme for the ultimate payment of a bribe, corporate officials may still

face charges for maintaining inaccurate corporate books and records and inadequate internal accounting controls that permitted illegal payments. This is true even when the payments were hidden from management.

#### B. International Anti-Bribery Conventions: the OECD Convention; UNCAC; and the AU Convention

The development of international anti-bribery conventions including the OECD Convention, the UNCAC and the AU Convention have caused the international regulatory community to raise anti-corruption standards to meet, and in some instances exceed, US-FCPA standards. Multilateral information-sharing and cooperation have resulted in more efficient and better-informed regulators, which has translated into a more aggressive enforcement environment globally.

Over 100 countries now have laws prohibiting foreign bribery similar to the US-FCPA. Domestic anti-bribery statutes are nearly ubiquitous. Participants in the global marketplace must understand that regulators in jurisdictions far-removed from corporate headquarters have an interest in enforcing anti-corruption initiatives, either directly or through cooperation with regulators in other jurisdictions. This change in attitude promises the most dramatic impact on international businesses going forward.

The misconduct identified by these international conventions is generally similar to that which is prohibited by the US-FCPA, and may also include language regarding the misconduct of the recipient of illicit payments. The number of jurisdictions that have committed to the principle of combating corruption is telling:

1. The OECD Convention = 37 (predominantly European) countries have entered into force relevant implementing legislation;
2. The UNCAC = 113 countries have ratified the UNCAC, including 34 African countries. Nine additional African countries have signed but not ratified;
3. The AU Convention = 41 of 53 members of the AU have signed the AU Convention. Of those 41 countries, 24 have ratified the Convention.

#### C. International Cooperation in Combating Corruption

The increasing complexity of international business transactions underscores the importance of cross-border cooperation among regulators in investigating and prosecuting instances of corruption. The OECD Working Group on Bribery is continuing to work to enhance coordination and cooperation to enable Parties to "allocate investigative and prosecutorial resources more effectively, address conflicts of jurisdiction constructively, and ensure that multiple investigations do not unduly restrict the rights and interests of defendants, victims and witnesses."<sup>7</sup> The OECD Working Group has noted several factors that contribute to the complexities of foreign bribery cases, including "involvement of local agents or consultants, subcontracting and sub-

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<sup>7</sup> Statement, *Shared Commitment to Fight Against Foreign Bribery, Tenth Anniversary of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Experts' meeting "The OECD Anti-Bribery Convention: The Road Ahead" (Rome, Italy) (21 November 2007).

subcontracting, and transactions via offshore centres and foreign subsidiaries. The problem of multiple-jurisdictions is magnified when consortiums are involved in foreign bribery."<sup>8</sup>

Cooperation among international regulators in the context of anti-corruption initiatives and securities enforcement in general has improved markedly over the past ten years.<sup>9</sup> The OECD Convention played a significant role in this development by providing an underpinning for cooperation among international regulators that in turn strengthened Mutual Legal Assistance Treaties ("MLATs") and Memoranda of Understanding ("MOUs"). Today, there are many cooperation arrangements in place among OECD Convention signatories and nonsignatories. The UNCAC and the International Organization of Securities Commissions ("IOSCO") MOU are examples of the evolution of the ideals set forth in the OECD Convention into practical, information-sharing frameworks.

As a result of increased cooperation, regulators have become far more effective at reaching outside their borders to:

1. Take evidence or statements from persons;
2. Effect service of judicial documents;
3. Execute searches and seizures and freeze assets;
4. Examine objects and sites;
5. Provide information, evidentiary items and expert evaluations;
6. Provide originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
7. Identify or trace proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
8. Facilitate the voluntary appearance of persons in the requesting state party; and
9. Provide any other type of assistance that is not contrary to the domestic law of the requested state party.

## II. Early Warning Signs: Identifying "Red Flags" and Indicia of Corruption

Companies operating in the global marketplace must have their own systems in place in order to detect problems before those problems lead to regulatory exposure. In addition, thoughtful and proactive compliance procedures can help protect a company from potentially costly errors of valuation -- a venture that depends on bribery or other misconduct for its success will lose its value when the misconduct is identified and stopped. For both of these reasons companies must undertake proactive due diligence.

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<sup>8</sup> *Id.*

<sup>9</sup> For an in-depth discussion of cooperation among international regulators with respect to securities enforcement, see Michael D. Mann and William P. Barry, *Developments in the Internationalization of Securities Enforcement*, 39 *The International Lawyer* 3-4 (Fall, Winter 2005).

## A. Assessing Relationships

This proactive due diligence includes identifying and addressing "red flags" such as those described below, but there is a more fundamental step that must come first. Companies should assess their relationships at the outset of deal. For a particular transaction this assessment can include:

1. Who is the company dealing with, including partners, counterparties and agents?
2. What is the service to be provided? Is it worth the amount paid?
3. How is payment to be made, and to whom?
4. Why is the proposed transaction or payment structured this way?

By asking these basic questions and viewing the answers through the prism of anti-corruption regulatory risk, companies can mitigate risk and save time and money by identifying a problematic deal before it is time to close.

## B. Common Red Flags

The presence of a red flag does not mean that a transaction cannot go forward, but does militate in favor of caution, investigation and evaluation before proceeding. Following up on a red flag is particularly important because judgments as to whether one had "knowledge" of an improper payment invariably will be made after the fact by regulators. Failure to follow up on a red flag can appear as willful or reckless indifference. Examples of red flags, described in the context of actual situations, appear below.

### 1. Unusual payment patterns or financial arrangements

The most common red flag regarding potentially corrupt payments is the existence of unusual payment patterns or financial arrangements. These can include:

- a) large cash payments or requests for significant advance payments;
- b) a disparity between the country where the service is provided and the country where payment is made, e.g., wire transfer to an account or bank located in a country known for its bank secrecy laws;
- c) interposition of a payee or agent to receive payment;
- d) unusual discounts;
- e) requested commissions/fees/payments that appear unusually high and without a corresponding level of service, or a request for a significant fee increase or payment when a decision impacting the investment is imminent.

2. The reputation of the region, industry or third party regarding corruption or other unethical conduct

Transparency International provides a comprehensive overview of the potential susceptibility of various regions and industries to corruption. In addition, companies should be wary in circumstances where the reputation and integrity of the third party is questionable or the third party has a reputation for making deals that no one else can.

3. Refusal to make requested certifications

A refusal by a foreign joint venture partner or representative to provide a certification that it will not take any action in furtherance of an unlawful offer, promise or payment to a foreign public official.<sup>10</sup>

4. Lack of transparency in accounting

Lack of transparency in expenses and accounting records. This is particularly relevant to anti-corruption compliance when the expenses relate to categories themselves susceptible to abuse, such as consulting fees or travel and entertainment expenses.

5. Lack of qualifications or resources or use of undisclosed subcontractors or subagents

Apparent lack of qualifications or resources on the part of a joint venture partner or representative to perform the services offered, or the third party is assisted by undisclosed “sub-agents” or “subcontractors.”

6. Direct dealing with a foreign official or persons recommended by a foreign official

In addition to circumstances when dealing directly with a government official, this situation can arise when a joint venture partner or agent has been recommended by an official of the potential government customer or the third party has personal or professional affiliations with a relevant foreign government or its officials.

7. Requests for political contributions

### C. Examples of Red Flags: Case Studies

Each of the following case studies is based on an actual situation. The majority of these cases resulted in criminal and civil charges in the U.S. While these case studies include multiple red flags, it is important to note that the presence of even a single red flag should be sufficient to justify further diligence and review.

1. Political Contribution - Lack of Transparency

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<sup>10</sup> For a detailed discussion of due diligence issues with respect to international joint ventures, see Michael D. Mann and William P. Barry, *Compliance Strategies for Investment Businesses and Global Corporations: International Anti-Corruption Regulation*, available at [http://www.rkollp.com/2008/04/memorandum\\_compliance\\_strategi.php](http://www.rkollp.com/2008/04/memorandum_compliance_strategi.php).

Company was asked to pay "advanced social fees" to the reelection campaign of the president of an African nation in return for a higher management fee on a wireless telephone contract. The contract had called for the company to pay "social fees" to develop areas of the country, but the fees were not due at the time they were paid. Also, the CEO of the company was allegedly aware that the fees would not be used for the purpose stated in the contract. The fees were falsely recorded in the Company's books and records as fees for "consulting services."

2. Payment Through Agent - Payment in Different Country with Bank Secrecy Laws - Reputation of the Region - Recommendation by Foreign Official

In connection with a carrier agreement with the PTT of a country with a low rating on Transparency International's Corruption Perceptions Index and an administration with a reputation for corruption, Company was directed to make payments to an account located in a different country known for its bank secrecy laws. The account to which payments were to be made was maintained by a third party agent, who allegedly provided accounting services to the PTT and received a fee based on overall traffic flowing from the arrangement with the PTT. The agent allegedly had the ability to set the rates for the carrier agreement which, in turn, impacted the amount paid to the agent. Rumors suggested that senior members of the country were affiliated with the agent.

3. Large Payment Tied to Contract Terms - Payments Routed Through Offshore Accounts - Lack of Transparency - Unusual Success of Agent

Company, a telecommunications equipment and service provider, was historically unsuccessful in winning contracts with the state-owned telecommunications authority. After enlisting the services of a consulting firm in return for almost 10% of the value of any contract obtained for the Company, the Company began winning bids. The consulting firm submitted "commission" invoices which were routed through the Company's in-country office, its place of headquarters, a series of U.S. banks and onward to an overseas account of the consulting firm. The consulting firm then wired proceeds to an offshore account held in the name of a foreign official's wife. Payments were allegedly directed to senior officials, including a senior official with the country's state-owned telecommunications company, in an effort to obtain an important contract. This matter led to the prosecution in the U.S. of a non-U.S. citizen who lived and worked outside the U.S. for a non-U.S. company, based on allegations that he bribed of a non-U.S. official.

4. High Travel and Entertainment Expense - Reputation of Region - Lack of Transparency

A telecommunications company entered into agreements with state-owned companies in a country with a poor reputation with respect to corruption. The agreements included Company-funded "factory inspection" trips to the U.S. for certain employees of the state-owned companies and were allegedly for the purpose of inspecting factories and receiving training with respect to Company's equipment. The employees were identified in the Company's internal documents as "decision-makers" or "influencers." Company's factories were located predominantly outside the U.S., many in the country where the employees lived. Very little time on these trips was spent at the factory or training sites. The trips focused on popular sight-seeing locations in the U.S. Company also paid educational expenses for relatives or associates of these employees. It is notable that the employees of the state-owned companies were deemed to be foreign officials.

### 5. Large Payments Tied to Contract Terms - Lack of Transparency - Recommendation of Foreign Official

An international telecommunications carrier, sought to obtain carrier contracts in several African countries through negotiations with the government-owned telephone companies. To facilitate this process, Company allegedly hired decision-makers at the various government-owned telephone companies to act as its agents. The agents were paid in different ways, including: a significant retainer and a portion the Company's profits if it won the bid; \$.01 for each minute of telephone traffic that Company was able to complete in-country; and a percentage of revenue realized by the Company. Payments were improperly recorded and disguised to avoid detection, including payments made through offshore accounts and through a shell company of which the agent was named CEO.

## III. How Companies Can Develop Internal Controls To Protect Themselves From Exposure

Telecommunications companies interested in participating in the global economy must be prepared to develop and implement world-class internal controls. These internal controls must include a company-wide program to address payment issues involving government officials and must be administered in a way that assures consistent understanding and application across the company. This means that internal controls should reflect cultural competence and be adaptable to the particular environment in which a company operates. They should include regular, documented training and oversight and clearly address expectations regarding commissions or other payments.

### A. Developing a Model Internal Control Structure

Telecommunications companies should develop and document robust internal controls that, at a minimum, include the following elements:

1. Clear communication and training of all employees with respect to the company's expectations, policies and procedures regarding payments issues;
2. The implementation of a compliance function and an anonymous ethics hotline that gives employees the opportunity to raise concerns with respect to potential payment issues as well as other ethical issues they wish to identify to management;
3. A systematic, transparent method for maintaining all books and records that is capable of being audited for compliance with the company's internal controls;
4. A periodic, risk-based internal audit schedule conducted by an internal auditor with sufficient resources and access within the company to ensure that the audits are a meaningful exercise; and
5. A management plan for how the company will address, investigate and remediate potential issues that arise or are reported.

The extraordinary responsibility placed on participants in the global marketplace can be challenging for senior management of multinational firms. Below we discuss strategies for meeting these increased standards.

#### IV. Strategies For Meeting Increased International Compliance Requirements and Expectations

Meeting increased international requirements and expectations begins with senior management ensuring a compliance-focused “tone at the top.” Global firms would benefit from adopting an approach to regulatory compliance by which senior management:

- A. Assesses and addresses regulatory exposure on a global basis to avoid surprises. This global assessment of regulatory risk should contain potential payment issues based on the various jurisdictions in which the company operates and should ensure that what may be transparent to the firm’s regulators is well-known to the firm’s senior management.
- B. Establishes centralized control/reporting in order to ensure a rational and consistent response to issues, and places ultimate responsibility for compliance on senior management to foster accountability, promote a compliance culture, and help ensure that regulatory compliance is given the proper level of attention within the organization.
- C. Establishes and fosters relationships with each of the regulatory authorities that may directly affect the company’s business. Transparent relationships with regulators will lay the foundation for potentially difficult conversations down the road if senior management makes a determination to self-report an issue and/or if the regulators have decided to undertake an investigation of the company’s activities.
- D. Delegates responsibility for developing, implementing and monitoring internal controls to an employee who can serve as a compliance officer for the company. The compliance function should be vested with sufficient resources and stature within the company so that the compliance officer can perform his or her duties in a meaningful way. The compliance function should be charged with formulating standards against the most stringent regulations to which the company may be subject. Given the increased cooperation across regulators, a company may well find itself answering questions posed by its strictest regulator. Ideally, the compliance officer should play an independent role within the company – without direct reporting lines to a particular business line – and should be able to focus substantially all of his or her time on compliance-related functions. The compliance officer should also be responsible for keeping current on applicable regulations and for maintaining an ongoing dialogue with senior management to understand new business initiatives that may expose the firm to additional regulatory risks or require compliance with new obligations.
- E. Emphasizes through ongoing attention and training the importance of anti-bribery policies, procedures and controls in all phases of the company's business, from initial transactional documents and due diligence through post-transaction monitoring and accounting.
- F. Establishes a detailed and robust process for vetting and hiring consultants and agents to be implemented by the corporate legal or compliance function.

G. Establishes, in conjunction with the compliance function, substantive training programs for employees in order to reinforce the “tone at the top” and to communicate management’s message that all personnel are responsible for communicating upward all failures to comply with the company’s internal policies and procedures, code of conduct, and/or applicable laws and regulations. Training for all employees should be mandatory and management should be instructed to permit employees sufficient flexibility in their schedules to attend the relevant training sessions.

H. Delegates responsibility for developing and implementing a substantive, robust audit plan to an internal audit person or team. Internal audit should be charged with testing the transparency and accuracy of the company’s books and records on a periodic basis. As with the compliance function, internal audit should have sufficient resources, stature and independence within the company to make the audit function a meaningful control mechanism. Internal audit plans should focus on potentially problematic areas of a company’s books and records, including a careful review of travel and expense reimbursement requests and requests for the payments of advance fees to external agents or vendors.

I. Implements an infrastructure that permits the company to respond quickly and effectively when issues are identified. Management’s plan should be institutionalized to include an approach for investigating alleged misconduct, taking decisive remedial action to address any issues, considering the possibility of self-reporting to one or more regulators, and responding to regulators in the event of a regulatory inquiry or investigation. The likelihood of coordination among regulators in different jurisdictions makes it essential that the company take an equally coordinated approach to responding to regulatory interest.