Combatiendo la corrupción en la empresa
Anticorruption Laws in the United States, United Kingdom and OECD Countries Can Affect You

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Risk Analysis is Key Overlay

Fraud and integrity are business issues not just legal or compliance.

Absence of meaningful risk analysis causes bad decisions for minimal benefit, but significant operational, reputational and financial exposure.
Anticorruption Laws are not just on United States Exports

1. Historically, most countries had anti-bribery rules
   a. Mainly directed at official who was bribe recipient
   b. Enforcement was rare, and usually political
   c. Not cover bribes of other countries’ officials

   a. Criminal and Civil Sanctions applied to U.S. public companies and foreign companies whose equity or debt was publicly traded and citizens who bribed foreign public officials
   b. Mandatory accurate accounting records and sufficient internal control system
   c. Enforcement was sporadic
   d. Huge increase since 2000
Anticorruption Laws are not just on United States Exports (2)

3. Since early 2000s, over 70 countries have signed anticorruption treaties prohibiting bribery of public officials in foreign countries
   a. Prior to OECD, most countries allowed bribes as business expenses for tax purposes

4. United Kingdom Bribery Act of 2010, effective July 2011 – Strictest of all
   a. Sanctions all forms of bribery (commercial and public)
   b. Criminal penalties and public board prohibition
   c. No facilitation payments allowed
   d. Company can point to compliance program defense
FCPA Violations

FCPA Violations

a. The payment, or providing something of value to government officials or to officials of state owned enterprises (SOEs) to influence decision to obtain or retain a business benefit

- Small payments to customers, local officials for incremental orders or “better treatment” may result in limited revenue gain, but disproportionate penalties and reputational damage
- Mexico, along with Brazil, China, India, Indonesia, Vietnam is listed as among the worst on Transparency International’s corruption list
- Large bribes have resulted in huge payments to authorities and executive jail time.

b. (the false accounting entry)

- Books and records – not necessarily related to inappropriate payments to government officials, royal family, SOEs
- Company’s books records not reflect what happened

Example:
- Record bribe paid to tax official as client entertainment
Top Ten FCPA Fines of All Time – And All Imposed Since 2008

Nine were Non U.S. Companies

1. Siemens (2008): $800 million (German)
2. KBR/Halliburton (2009): $579 million (United States)
3. BAE (2010): $400 million (United Kingdom)
5. Technip (2010): $338 million (France)
6. JGC Corporation (2011): $218.8 million (Japan)
7. Daimler AG (2010): $185 million (German)
8. Alcatel-Lucent (2010): $137 million (German)
9. Panalpina (2010): $81.8 million (Switzerland)
10. ABB Ltd (2010): $58.3 million (Switzerland)
DOJ & SEC FCPA Enforcement Actions, 2004-2011

![Bar chart showing Enforcement Actions from 2004 to 2011. The chart includes bars for SEC actions, DOJ actions, and TOTAL enforcement actions for each year.]
Two Defenses in the FCPA

• *Reasonable and Bona Fide Expenditures:* such as travel and lodging expenses,“ that are directly related to (A) the promotion, demonstration, or explanation of products or services; or (B) the execution or performance of a contract with a foreign government or agency thereof. 15 U.S.C. §§78dd-1(c)(2), 78dd-2(c)(2), 78dd-3(c)(2).

• *Facilitating Payments for Routine Government Actions.* Such as those made to foreign officials for the purpose of causing them to perform "routine governmental actions." 15 U.S.C. §§78dd-1(b), 78dd-2(b), 78dd-3(b).
Facilitating ("Grease") Payment Exception… What is it?

• De minimus payment for a routine ministerial act
• Not affect outcome for payor, no discretion by government officials

  Ex. Police supposed to patrol, refuse to do their duty without modest bribe
  But – cannot pay police to look other way, or avoid police action

  Ex. All approvals done by agency except affixing a stamp, but stamper won’t affix stamp.
  Pay to affix stamp only, cannot affect decision that stamp is appropriate

• **Must** record payment as a facilitating payment, not hide purpose of payment

• Some companies report quarterly all facilitating payments to Audit Committee

• Facilitating payments must be closely monitored, should require prior senior executive, legal approval

• Do not leave to discretion of local business head, not good enough
Facilitating ("Grease") Payment Exception…

• Facilitating, or “grease” payments exception is notoriously difficult to understand and apply

• There are no recent enforcement actions in which the U.S. government believed that a payment fell into this exception

• FACILITATING PAYMENTS NOT EXCEPTIONS OR DEFENSES IN OTHER COUNTRIES’ ANTI-BRIBERY SCHEMES.
  – OECD
  – UK Bribery Act
Books and Records Violation Does Not Have to be a Corrupt Payment to a Foreign Official to be an FCPA Violation

• Failure to accurately record any payment
• To government official or private customer
• Is a violation
• Would cover bribes or other payments to non government “officers” if payment recorded in a way to disguise true nature of activity
# FCPA Enforcement Actions Involving China

<table>
<thead>
<tr>
<th>Company</th>
<th>Industry</th>
<th>Conduct</th>
<th>Enforcement</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGA Medical Corp.</td>
<td>Medical device</td>
<td>Paid doctors at Chinese state-owned hospitals</td>
<td>DOJ</td>
<td>June-08</td>
<td>$2 million</td>
</tr>
<tr>
<td>Avery Dennison Corp.</td>
<td>Manufacturing</td>
<td>Provided $81,000 in trips and gifts to government officials in China</td>
<td>SEC</td>
<td>June-09</td>
<td>$518,500</td>
</tr>
<tr>
<td>Control Components Inc.</td>
<td>Manufacturing</td>
<td>Paid $7 million in bribes to government officials and private companies in several countries, including China</td>
<td>DOJ</td>
<td>July-09</td>
<td>$18.2 million and corporate monitor</td>
</tr>
<tr>
<td>Daimler</td>
<td>Manufacturing</td>
<td>Paid tens of millions in bribes to government officials in 20 countries, including China</td>
<td>DOJ and SEC</td>
<td>April-10</td>
<td>$185 million and corporate monitor</td>
</tr>
</tbody>
</table>
# FCPA Enforcement Actions Involving China (2)

<table>
<thead>
<tr>
<th>Company</th>
<th>Industry</th>
<th>Conduct</th>
<th>Enforcement</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faro Technologies</td>
<td>Technology</td>
<td>Paid employees of Chinese state-owned companies</td>
<td>DOJ and SEC</td>
<td>June-08</td>
<td>$2.95 million</td>
</tr>
<tr>
<td>IBM</td>
<td>Technology</td>
<td>Trips and gifts to government officials in China and Korea</td>
<td>SEC</td>
<td>March-11</td>
<td>$10 million</td>
</tr>
<tr>
<td>ITT Corp.</td>
<td>Manufacturing</td>
<td>Paid $200,000 to employees of Chinese state-owned companies</td>
<td>SEC</td>
<td>February-09</td>
<td>$1.67 million</td>
</tr>
<tr>
<td>Maxwell Technologies Inc.</td>
<td>Manufacturing</td>
<td>Paid $2.5 million to Chinese agent for the purpose of using money to pay government officials</td>
<td>DOJ and SEC</td>
<td>January-11</td>
<td>$14.3 million</td>
</tr>
</tbody>
</table>
### FCPA Enforcement Actions Involving China (3)

<table>
<thead>
<tr>
<th>Company</th>
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<th>Conduct</th>
<th>Enforcement</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>RAE Systems Inc.</td>
<td>Technology</td>
<td>Books and records and internal control violations related to payments to Chinese government officials</td>
<td>DOJ and SEC</td>
<td>December-10</td>
<td>$2.9 million</td>
</tr>
<tr>
<td>Siemens</td>
<td>Manufacturing</td>
<td>Made $1.36 billion in corrupt payments to government officials in numerous countries, including China</td>
<td>DOJ and SEC</td>
<td>December-08</td>
<td>$800 million</td>
</tr>
</tbody>
</table>
## FCPA Enforcement Actions Involving China (4)

<table>
<thead>
<tr>
<th>Company</th>
<th>Industry</th>
<th>Conduct</th>
<th>Enforcement</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>UT Starcom</td>
<td>Telecommunications</td>
<td>Trips to govt officials in China</td>
<td>DOJ and SEC</td>
<td>December-09</td>
<td>$3 million</td>
</tr>
<tr>
<td>Veraz Networks, Inc.</td>
<td>Telecommunications</td>
<td>Paid $40,000 in kickbacks to employees of a Chinese state-owned company</td>
<td>SEC</td>
<td>June-10</td>
<td>$300,000</td>
</tr>
<tr>
<td>Watts Water Technologies</td>
<td>Manufacturing</td>
<td>Paid employees of Chinese state-owned design institutes</td>
<td>SEC</td>
<td>October-11</td>
<td>$3.7 million</td>
</tr>
</tbody>
</table>
## FCPA Enforcement Actions Involving Mexico

<table>
<thead>
<tr>
<th>Company</th>
<th>Industry</th>
<th>Conduct</th>
<th>Enforcement</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paradigm B.V.</td>
<td>Geologic software for oil &amp; gas business</td>
<td>Extraordinary entertainment of PEMEX official and officials elsewhere</td>
<td>DOJ</td>
<td>2007</td>
<td>$1 million</td>
</tr>
<tr>
<td>Syncor International Corp.</td>
<td>Radio-pharmaceutical products</td>
<td>Paid doctors “apoyo” at Mexico state owned hospital</td>
<td>SEC</td>
<td>2007</td>
<td>$500,000</td>
</tr>
<tr>
<td>Siemen’s</td>
<td>German Manufacturing</td>
<td>Paid hundreds of millions in bribes to government officials in 20 countries, including payments through consultants in Mexico to PEMEX</td>
<td>DOJ and SEC</td>
<td>April-10</td>
<td>$450 million fine, 350 disgorgement of profit and corporate monitor</td>
</tr>
<tr>
<td>Lindsey Manufacturing</td>
<td>Electrical Equipment</td>
<td>Paid $5.9 million to officials at CFE</td>
<td>DOJ</td>
<td>2010</td>
<td></td>
</tr>
</tbody>
</table>
## FCPA Enforcement Actions Involving Mexico (2)

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<thead>
<tr>
<th>Company</th>
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<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panalpina</td>
<td>Swiss Expeditor</td>
<td>Paid “expediting fees” to Mexico officials</td>
<td>DOJ and SEC</td>
<td>2010</td>
<td>$80 million</td>
</tr>
<tr>
<td>ABB</td>
<td>Electrical Equipment</td>
<td>Paid $1.6 million to CFE official</td>
<td>DOJ and SEC</td>
<td>2010</td>
<td>$28.5 million criminal</td>
</tr>
<tr>
<td>Pride Int’l, Inc.</td>
<td>Oil Drilling and Rigs</td>
<td>Paid $294,000 in bribes in Venezuela, $500,000 in India and $10,000 to Mexico customs service official</td>
<td>DOJ</td>
<td>2010</td>
<td>$32.6 million criminal fine</td>
</tr>
<tr>
<td>Bridgestone</td>
<td>Manufacturing Marine Hose</td>
<td>Paid Mexico and Latin American customs purchasing agents</td>
<td>DOJ</td>
<td>2011</td>
<td>$28 million</td>
</tr>
</tbody>
</table>
# FCPA Enforcement Actions Involving Mexico (3)

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<th>Enforcement</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tyson’s</td>
<td>Poultry Exportation to Asia</td>
<td>Made indirect payments to wives of government veterinary inspectors</td>
<td>DOJ and SEC</td>
<td>2011</td>
<td>$4 million</td>
</tr>
</tbody>
</table>
Common FCPA Issues

1. Gift Culture
   a. Small tokens of appreciation are part of culture
   b. Private companies, individuals
   c. Government official/agents also expect
   d. De minimus gifts are hard to link to receipt of a “thing of value”; not same for larger gifts or pattern of gift giving

2. Travel and Entertainment
   a. Government officials or SOEs such as PEMEX officials tour or train at foreign facilities where products are made. (Permissible under FCPA)
   b. Not Permissible if
      i. add on trip to “destinations” such as Las Vegas, New York, Disneyworld
      ii. expensive meals, entertainment
      iii. cash per-diems (in addition to provided meals and incidentals)

3. Agents, Distributors, Joint Venturers and other Third Party Intermediaries (TPIs)

4. M&A Activity
Liability for Indirect Payments Made By Third Parties on Company Behalf

**Siemens Aktiengesellschaft (2008)**

- **Player:** A German engineering conglomerate.

- **Conduct:** Company and its subsidiaries allegedly engaged in a widespread and systematic practice of paying bribes, often using intermediaries, to foreign officials for the purpose of obtaining business. In Venezuela, for example, the company paid almost $19 million in bribes to government officials, using sham consultants and other intermediaries, in connection with mass transit systems in the Venezuelan cities of Valencia and Maracaibo. In Mexico, the company allegedly paid approximately $2.6 million in bribes to a business consultant, some portion of which allegedly was routed to a senior official at Pemex.

- **Outcome:** In addition to the penalties it owed German authorities, the company agreed to pay a total of more than $450 million in FCPA fines in the U.S. and to disgorge more than $350 million in profits obtained through corrupt payments. Company also agreed to compliance monitoring.
 Liability for Indirect Payments Made By Third Parties on Company Behalf

Panalpina World Transport (Panalpina) (2010)

• **Player:** A Swiss Expeditor

• **Conduct:** Hired by U.S. Issuers Shell, Pride, Tidewater Marine, Transocean, Global Santa Fe and Noble Corp. (all companies with global operations) to expedite permits, licenses in Africa, South America, Mexico, Asia, former Soviet Union.

• **Outcome:** Panalpina, the expeditor, and companies who used Panalpina as expediting agents pled guilty to FCPA violations.
Liability for the Actions of a Subsidiary

Nature’s Sunshine Products Incorporated ("Nature’s Sunshine") (2009)

• **Players:** Douglas Faggioli and Craig D. Huff, the Chief Executive Officer and former Chief Financial Officer of Nature’s Sunshine, a manufacturer of nutritional products

• **Conduct:** A wholly-owned subsidiary of Nature’s Sunshine made cash payments to Brazilian customs agents in violation of the FCPA.

• **Outcome:** SEC charged Faggioli and Huff with violating the books-and-records provision of the FCPA, alleging that they had overall responsibility for the international operations of the company and that the people who would know about the relevant issues were under their control. This was the first time the SEC imposed liability on individuals under a theory of "control person" liability in an FCPA case. Under that theory, the SEC may charge an individual who manages a company absent evidence that he or she knew about or participated in a bribery scheme.
Successor Liability Post Acquisition

**eLandia International (2009)**

- **Players**: eLandia International acquired Latin Node Inc. ("Latinode") a wholesale telecom services provider in 2007

- **Conduct**: eLandia discovered after the purchase a pattern of payments (March 2004-January 2007), $1.1 million paid indirectly to Hondatel, the Honduran state owned telecom, as well as $1.15 million paid to Yemeni official (July 2005-April 2006)

- **Outcome**: eLandia self reported. Paid $2.0 million criminal fine
Recent FCPA Trends

- Enforcement Against Individuals

![Graph showing Enforcement Against Individuals from 2006 to 2010]

<table>
<thead>
<tr>
<th>Year</th>
<th>SEC</th>
<th>DOJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>2007</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>2008</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>2009</td>
<td>30</td>
<td>35</td>
</tr>
<tr>
<td>2010</td>
<td>20</td>
<td>25</td>
</tr>
</tbody>
</table>
Recent Trends

• Notable Penalties Against Individuals

– Jeffrey Tesler (KBR) - $149 million and facing up to ten years imprisonment (sentencing in February 2012)

– Robert Antoine (Telecommunications D’Haiti) - $3.4 million and 48 months imprisonment

– Juan Diaz (J.D. Locator Services) - $1.1 million and 57 months imprisonment

– Patricia Green (Artist Design Corp.) - $1.3 million and six months imprisonment
Recent FCPA Trends

- Increased Penalties

![Bar chart showing increased penalties from 2007 to 2010 for SEC and DOJ](chart)

![Y-axis labels: $0, $500,000,000, $1,000,000,000, $1,500,000,000, $2,000,000,000](chart)

Why Do Companies Get Into Trouble?

• Tone at the top/failure of leadership -- Talk the talk, but don’t walk the walk

• Failure to integrate new acquisitions and businesses
  • culture integration
  • system integration
  • reduce lone wolf, off reservation behavior

• Failure to train and retrain employees, new and old
  • repetitive training syndrome a good thing

• Failure to maintain and staff key systems and controls functions

• Failure to do Risk/Reward analysis on behavior
Why Do Companies Get Into Trouble? (2)

• Failure to monitor operations, marketing and sales
• Failure of communications
• Failure to pay attention to the details
  • due diligence flags issues/not respond with a deep dive
  • internal audit flags issues/not act
• Local or divisional management influences controls, override or not deal with financial and operational weakness issues
Exhibit A
A foreign corruption practices act primer
Two Distinct Aspects of the FCPA:

Foreign Corrupt Practices Act (FCPA)

Anti-Bribery Provisions
Makes it illegal to make payments with a corrupt motive directly or indirectly to foreign officials or any other person acting as a conduit for payments to foreign officials or political parties, for purpose of influencing the official, in order to assist in obtaining or retaining business.

Statutory Citation: 15 U.S.C. §§78dd-1, 78dd-2, 78dd-3
**FCPA Primer**

Two Distinct Aspects of the FCPA:

- **Foreign Corrupt Practices Act (FCPA)**

  - **Books & Records Provisions**
    - Requires companies who file reports with SEC to maintain records that accurately reflect transactions and the nature and quantity of corporate assets and liabilities.

Statutory Citation: 15 U.S.C. §78m(b)(2)(A)-(B)
Two Distinct Aspects of the FCPA:

Foreign Corrupt Practices Act (FCPA)

Anti-Bribery Provisions

Makes it illegal to make payments with a corrupt motive directly or indirectly to foreign officials or any other person acting as a conduit for payments to foreign officials or political parties, for purpose of influencing the official, in order to assist in obtaining or retaining business.

Books & Records Provisions

Requires companies who file reports with SEC to maintain records that accurately reflect transactions and the nature and quantity of corporate assets and liabilities.
Two Distinct Aspects of the FCPA:

Other Important Concerns

• Ignorance of the law is not a valid defense
• Source of the alleged bribe does not have to be in the U.S.
• Actions of an agent acting —on behalf of a company – are attributed to company.
• Can apply to non-U.S. companies and non U.S. citizens
• Actions of a foreign subsidiary can be attributed to the U.S. parent
FCPA Penalties

Anti-Bribery Criminal Penalties
• Up to a $2 million fine per violation for public companies
• Up to 5 years imprisonment and $250,000 in fines for individuals (officers, directors, employees and agents)

Books and Records Criminal Penalties
• Up to $25 million for public companies
• Up to 20 years imprisonment and $5 million in fines for individuals

Civil Penalties for Anti-Bribery and Books and Records Violations
• DOJ or SEC can bring civil actions for a fine of up to $10,000 per violation against any company or any of its officers, directors, employees or agents
FCPA Penalties

Injunctive and Other Remedies

• Restitution and Disgorgement up to all revenue from transaction for FCPA Violations of SEC and DOJ Settlement

• Monitor overseeing Company’s compliance for 2-3 years
Elements of FCPA Violations

The FCPA’s Anti-Bribery provision consists of five separate elements:

1. A “covered person”

2. with “corrupt intent”
Elements of FCPA Violations

The FCPA’s Anti-Bribery provision consists of five separate elements:

1. A “covered person”

2. with “corrupt intent”

3. Directly or Indirectly Offers, Promises or Gives Anything of Value

4. To a foreign official
The FCPA’s Anti-Bribery provision consists of five separate elements:

1. A “covered person”
2. with “corrupt intent”
3. Directly or Indirectly Offers, Promises or Gives Anything of Value
4. To a foreign official
5. To obtain or retain business
1. Covered Persons

• Issuers (15 U.S.C. §78dd-1)
• Domestic Concerns (§78dd-2)
• U.S. Persons (§§78dd-1(g) and 78dd-2(i)) –Anywhere in the world
• Foreign Persons (§78dd-3) who, while in the territory of the U.S., use instrumentality of interstate commerce in furtherance of scheme
• Third Party Intermediaries such as agents of the above who assist in FCPA violations
2. Corrupt Intent

- Person making or authorizing payment must have corrupt intent.
- Payment must be intended to induce the recipient to misuse his official position for the purpose of securing an improper business advantage.
- Does not require that a corrupt act succeed in its purpose. The offer or promise of a corrupt payment is enough.
- Corrupt intent often assumed by enforcement officials if other elements are present.
- United States v. Kay, 359 F.3d 738 (5th Cir. 2004). FCPA does not require that actor have actual knowledge that the FCPA prohibits conduct, but only that conduct is generally unlawful.
3. Directly or Indirectly

• Vicarious liability for third-party payments

• Payment — knowing there is a high probability that the payment will pass through to an official
  - Failing to investigate third-party risks
  - Hiring a third-party who is likely to pay
    -- excessive commissions, fees

• Ignoring — red flags
4. Offers, Promises or Gives

- Approving a payment
- Relaying e-mail instructions to pay
- Discussing payments by telephone
- Acquiescing in payment
- Knowingly cooperate in payment
- Covering up payment
- Creating or accepting a false invoice
5. Anything of Value

FCPA does not define “Value” but “Value” has been broadly interpreted to include tangible & intangible benefits including...

- Cash Payments, including excessive facilitating payments
- Commissions that seem large in relation to the services provided
- Gifts: Jewelry, travel, etc.
- Employment of an unqualified relative of official
- College scholarship for a child of official
- Donations to political parties
- Personal favors
- Charitable contributions
- Promise of future employment

“Offers” of value – both direct and indirect – are sufficient to create FCPA liability no matter what their size
6. Who is a “Foreign Official”?

“Foreign officials” broadly defined to include nearly anyone in a foreign government, including:

Anyone in a Foreign Government:
- Ministers, government officials, members of parliament, etc.
- Any employee of a government agency
- Any employee of any government-owned business (e.g., PEMEX or government-owned airlines), also called state owned enterprise (SOE)

Political Parties & International Organizations:
- Political candidates
- Political parties
- International organizations (e.g. World Bank, United Nations, Olympic Committee, etc.)

Private Persons & Advisors
- Anyone who has a responsibility similar to those of government employees.
- Consultants
- Advisors
Exhibit B

FCPA common risk areas
FCPA Risk Areas

1. Sales and Marketing Process – Buying Business – Pay to Play
   - Direct Sales and Marketing efforts
   - Agents/Distributors
   - Selling to Governments/State Owned Enterprises
   - Entertainment, Trips for training, demonstration that have extravagant add-ons or side trips

2. Permitting Process to Access a Country or its Markets or get Facilities or People into Country
   - Licenses to do business in country, or a type of action
   - Permits related to Green Field operations in country
   - Immigration
   - Customs
3. **Logistics – getting equipment, goods, technology into foreign country**
   - Duties – Misclassification
   - Expediting Fees – Freight Forwarders – Panalpina

4. **Getting Paid**
   - Sale in local currency
   - Government control of currency exchange
   - Cannot convert local revenue to USD and get rid of country
FCPA Risk Areas (3)

5. Manufacturing or other Operations within a Country

• Work Permits
• Immigration, Temporary Work Visas
• Police, Fire Protection
• Protection Payments
• Inspections of Manufacturing or Repair Facilities
  – Environmental
  – Health/Safety
• Construction
  – Building Permits
  – Final CO
• Tax Disputes
• Labor Disputes
6. Third Party Intermediaries (TPIs)

- Agents
- Distributors
- Joint Ventures
  - TPI misconduct can be attributed to you
  - Less than 50% interest of JV – pay attention, push for compliance
  - Purchasing increasing interest to obtain over 50% of JV creates additional obligations/risk
  - Most JVs are to enable foreign companies/entities to compete for local, in-country work
  - **Must** know JV partner’s agents or distributors and how they operate
  - If Government or SOE are clients, additional risks
7. Acquisitions of a Company with Foreign Operations

Huge pressure on due diligence process—

1. **Is the revenue sustainable**
   - Is revenue stream dependant on pay to play, what if payments stop
   - What are you really acquiring if once acquisition completed, you stop paying for business?

2. **Operational facilitation in foreign country**
   - Is it clean
   - Operating under sufferance of bribed local officials

3. **Recordkeeping**
   - Do accounting records accurately reflect bad conduct
   - Stop conduct, correct books and records before buy
   - DOJ – Clean up letter
     - 6 month window
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