Anti-corruption
Advisory Services

Confronting Corruption*

Evaluating risk in the international marketplace

Anti-Bribery/Corruption

Corporations continue to expand across the globe in a bid to capture maximum profit and growth. As they do so, many companies underestimate the risk of illegal practices in the international marketplace, exposing them to bribery and corruption. They are also discovering that governments are more vigorously enforcing laws against corruption and are imposing stiffer penalties. In addition to fines, corporations prosecuted for bribery and corruption risk real and lasting damage to their corporate reputation, operations and profitability. Despite these hazards, most companies do not adequately protect themselves because they believe they are not at risk or that their existing anti-corruption policies are sufficient. It is essential that US corporations take an in-depth look at their policies and safeguard themselves by proactively implementing and monitoring controls designed to mitigate bribery and corruption.

The consequence of corruption

Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977 to prohibit bribery and corruption of foreign officials. It also requires a company to maintain accurate books and records, as well as establish and maintain adequate internal controls. These controls should provide reasonable assurance that management instructions are implemented and any discrepancies are detected and reconciled. This may sound simple, but it's not. All it takes is one person acting illegally to put an entire company afoul of the FCPA. What's more, even the most experienced corporations often fail to properly assess corruption risks when entering new cultures and environments.

Nearly half of all organizations surveyed by the PricewaterhouseCoopers (PwC) 2007 Global Economic Crime Survey reported they had been victims of some form of economic crime during the past two years. Bribery and corruption tend to be more prevalent in developing markets, which also offer the greatest opportunities for growth and profit. As more US corporations take advantage of these growth opportunities, smart business practices dictate that they take steps to proactively prevent bribery and corruption.

In addition to the increase of economic crime, we have seen heightened government scrutiny as the Department of Justice (DOJ), Securities and Exchange Commission (SEC), and Federal Bureau of Investigation (FBI) more vigorously investigate bribery and corruption charges. For instance, the DOJ has allocated more prosecutors to FCPA cases, and the FBI has created a task force to identify violations of the FCPA. Government regulators are prosecuting not only corporations, but also corporate executives, which has resulted in suspended prison sentences for some senior executives. During the first half of 2007, regulators brought 20 enforcement cases, as opposed to 24 for the entire year of 2006. And that's just the tip of the iceberg, according to Mark F. Mendelsohn, deputy chief of the DOJ's fraud section, who says that more than 100 inquiries of possible FCPA violations are currently open. The DOJ has made it clear that prosecution of bribery and corruption is a priority, and all signs are that this aggressive level of enforcement will continue unabated.

Investigating corruption is not just a US phenomenon. The rest of the world is focusing more attention on the subject, particularly in emerging market economies like Brazil, China & India. The Organization for Economic Co-operation and Development (OECD), comprised mainly of European countries, ratified in 1997 its Anti-Bribery Convention, which includes regulations that aim to combat bribery of foreign officials in international business transactions. Additionally, the OECD called on member states to ban tax deductibility of bribes and take other measures to eliminate the practice of bribery, which was a huge step forward in the fight against corruption.

Moreover, in many recent prosecutions several countries were involved and cooperated in the investigation of wrongdoing, with separate enforcement actions taken by individual countries. Like the US, other countries are also beginning to enforce national laws more vigorously. Simultaneously, fines for companies convicted of bribery and corruption are reaching new heights. The largest FCPA settlement to date is $50 million, and the average fine, based on settlements reached since 2005, is $13.5 million. Internationally, a German court fined Siemens AG a staggering €201 ($283 million) in an ongoing case that the OECD says is a turning point in the global fight against corruption. It's important to note that the costs of investigation, remediation, and, in some cases, disgorgement of profits earned as a result of illegal practices (a relatively new procedure that was first employed by the SEC in 2004 in the case SEC v. ABB.) are not included in the fines and often exceed the penalties themselves. And penalties go far beyond fines: Companies must also consider other severe consequences such as long-lasting (and costly) reputational damage, and the potential loss of assets, market value, profits, employees, and market access. Likewise, the interruption to operations and the potential loss of present and future contracts as a result of corruption can have a dramatic impact on the company's future growth prospects and consequently their stock price.

While penalties are increasingly severe, companies accused of wrongdoing can seek to lessen punitive damages by cooperating with government prosecutors. Actions such as implementing proactive ethics and compliance programs, self-reporting of wrongdoing, prompt remediation, and meaningful cooperation in the investigation (providing protected material, for instance) can result in tangible benefits. These actions can provide credits which can range from the step of taking no enforcement action to bringing reduced charges, seeking lighter sanctions, or including mitigating language in documents prosecutors use to announce and resolve enforcement actions.

"Prosecuting corruption of all kinds is a high priority for the Justice Department and for me as head of the Criminal Division. That includes public corruption, corruption in the procurement process, and the Foreign Corrupt Practices Act… We are enforcing the FCPA to root out global corruption and preserve the integrity of the world's markets…"

Alice S. Fisher, Assistant Attorney General, U.S. Department of Justice

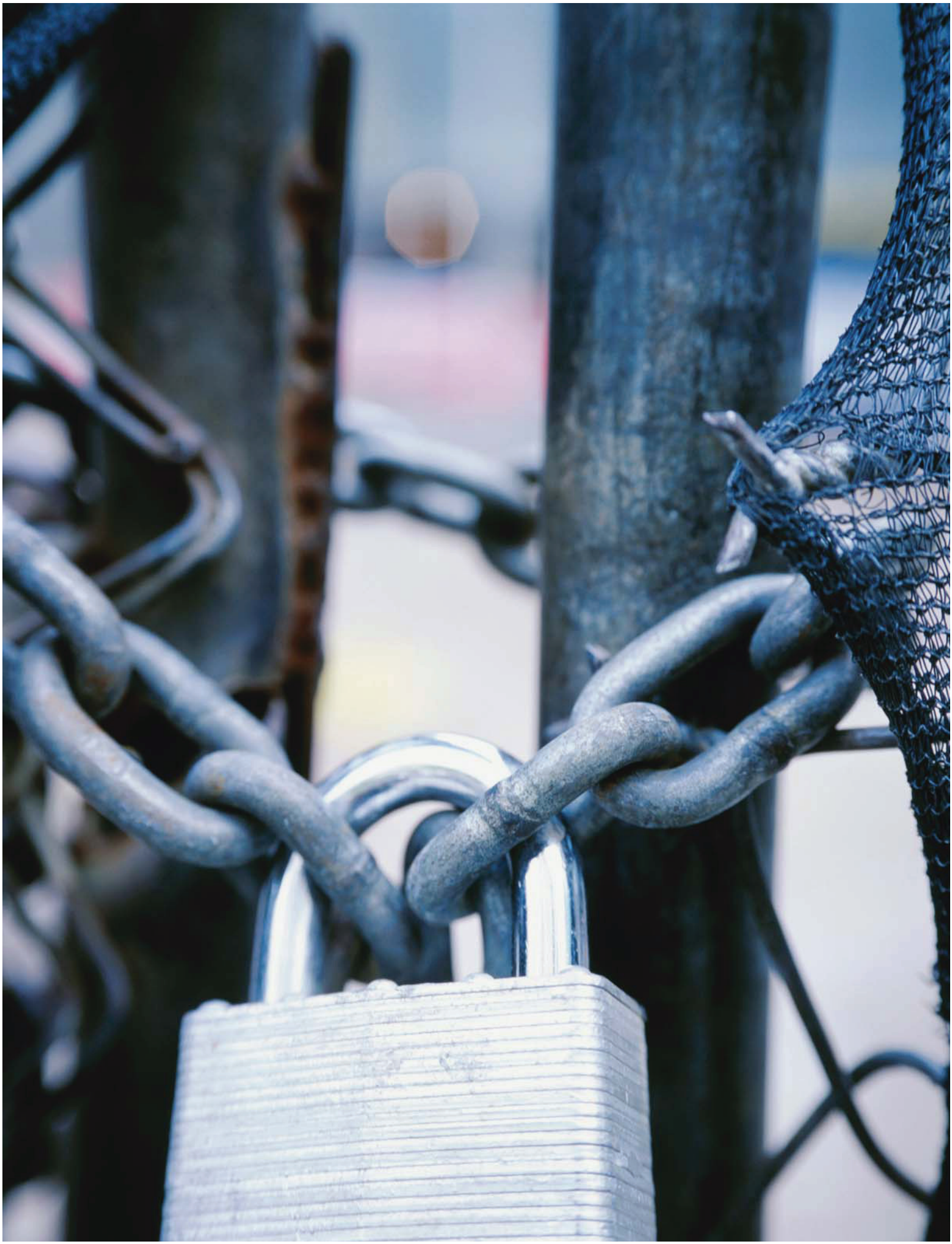
Another form of cooperation aims to prevent wrongdoing in the first place. We have seen increased participation in voluntary organizations like the World Economic Forum's Partnering against Corruption Initiative (PACI) and the United Nations Convention against Corruption. These organizations aim to prevent and remedy corruption in both the public and private sectors. PricewaterhouseCoopers has been very active in these organizations, as well as in Transparency International (TI), an organization formed to promote business principles for countering bribery and developing self-evaluation tools and external assessment methodologies. And, as one of the developers of COSO (the Committee of Sponsoring Organizations) guidelines, we continue to work with international organizations to tailor COSO to create a global standard for prevention of corruption. To leverage these efforts and enhance the credibility and transparency of anticorruption programs, we are currently spearheading an international program to create an external assessment of anti-corruption programs and controls.

Avoiding wrongdoing in the global market

Corruption can't be avoided but it can be managed. US respondents to the PwC Global Economic Crime Survey generally reported they would not allow economic crime concerns (corruption and bribery is at the top of the list) to prevent an investment - however, the great majority of these respondents reported these concerns changed their management decision processes both at home and abroad.

Corporations that operate in the global marketplace can take effective measures to protect themselves against wrongdoing by implementing a proactive and comprehensive anti-corruption program that addresses a company's culture, training, policies, and controls.

- Companies must conduct tailored corruption risk assessments at the entity and business unit level, evaluate the design and validate the operating effectiveness of transaction controls, including the vulnerability to collusion and the override of controls. Companies must also pro-actively monitor transactions to detect inappropriate conduct.
- Companies must ensure that a zero-tolerance position on corruption is an intrinsic philosophy of corporate culture, starting at the top of the organization. This message must be communicated from the top and reinforced rigorously. This position should also be combined with a corporate culture that encourages whistle-blowing.



- At a minimum, companies must be proactive and follow the guidelines set forth by government regulators. This includes conducting a self-assessment of risk, evaluating and improving FCPA controls and procedures, providing training on the FCPA and other nation's laws, auditing, and self-policing.
- To fully benefit from the operational and financial enhancements of implementing an anti-corruption program, companies should strive to adopt best practices such as those detailed in World Economic Forum's Partnering against Corruption Initiative (WEF-PACI).
- Training for anti-corruption programs and policies is essential. Training should be conducted throughout the organization and it should be made clear to all employees that the company will monitor and strictly enforce all policies.
- Companies must monitor business decisions and practices in their overseas divisions. They must know their business partners, business agents, suppliers, and local management teams and consider training them in anti-corruption policies, and monitor their performance.
- Companies must investigate all allegations and complaints. All too often firms choose to ignore wrongdoing; regulatory agencies now expect that controls are in place and are being enforced. Likewise, at the completion of every investigation, companies should enhance their programs and controls with the information learned during the investigation process.
- It's essential to perform due diligence specific to anti-bribery and corruption when investigating mergers and acquisitions. The standard financial due diligence will not significantly mitigate or avoid successor liability related to corruption in the global market.

"The fact is, if you are doing the things you should be doing - whether it is self-policing, self-reporting, conducting proactive risk assessments, improving your controls and procedures, training on the FCPA, or cooperating with an investigation after it starts - you will get a benefit. It may not mean that you or your client will get a complete pass, but you will get a real, tangible benefit."

Alice S. Fisher, Assistant Attorney General, U.S. Department of Justice

How PricewaterhouseCoopers can put it all together

PricewaterhouseCoopers believes that companies must make FCPA compliance a key principle of their corporate philosophy and integrate controls as a fundamental component of their sales and marketing business model. We have the experience, expertise, and global reach to help our clients navigate and integrate all phases of regulatory compliance. Our people know the regulatory environment and understand the expectations of global regulatory agencies. Here's how we can help design, implement, evaluate and monitor the effectiveness of a company's anti-corruption programs:

1. Program Evaluation, Design, and Implementation

   PwC pioneered a framework, which has since been embraced by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), SEC, AICPA and IIA. As applied to corruption risk, the key elements are:

   - Risk identification, based on PwC inventory of common and sector specific corruption risks, commonly used schemes, case research, and client interviews and focus groups. The assessment includes (1) identifying all government interactions — not just sales to government agencies — and weighing the incentives, pressures and opportunities to make illegal payments, (2) reviewing processes to identify how the entity might obtain the funds to make illegal payments, e.g. fictitious vendors, overpayments, consultants, (3) assessing risk at the entity level, and (4) assessing risk at the business unit and process level.
   - Dissecting the schemes into key participants and components as a basis to evaluate, validate, and, if necessary, redesign the operating effectiveness of transaction level controls
   - Analyzing the schemes according to key risk factors and indicators and maximizing technology to develop early warning systems

2. Knowledge Transfer

   An entity cannot just outsource corruption prevention. Rather, it must train "front line" (finance operations) and "second line" (internal audit, compliance) personnel to be able to assess risk, evaluate controls, and spot risk factors and indicators. PwC transfers knowledge to clients through formal and informal training and apprentice programs.

3. Investigation and Crisis Management

   Our deep experience with the FCPA and anti-corruption initiatives is recognized by governments and regulators around the world. We know that a company in crisis must act swiftly, and our embedded team of experts in more than 40 countries ensures that investigations are quickly and thoroughly completed. This investigations team has a comprehensive understanding of both local and regional legal, financial, and regulatory systems, as well as the types of activities that pose threats when conducting business worldwide.

Recovering electronic documents, which is an essential part of the investigations process, requires an experienced and wide-reaching approach. Electronic data must be recovered and analyzed in its country of origin, and we have a team of technologists in place around the world that can efficiently find, retrieve, preserve, analyze, and process a wide array of electronic information. Our technology tools enable PwC investigators to screen large volumes of payment data and rank them according to risk factors and determine which payments may be problematic.

4. Remediation

   When we assist companies in the implementation of their post-investigative solutions, we go beyond addressing the known problems. We also look to the future to anticipate compliance and controls issues that might emerge in the global marketplace. And because we have the respect of regulators around the world and experience working with outside compliance monitors, we can swiftly and effectively conclude the remediation process.

5. Due diligence

   Due diligence specific to anti-corruption is an essential first step when acquiring a company abroad. We assess international sales practices and customer mix, benchmark the target's programs to those of the client, assess how the target monitors its business activities internationally, review the target's interactions with government officials, and review the target's key controls. Expert risk assessment is the key element of a properly scaled response to the corruption issue in an acquisition situation. We identify sources of risk within the company's operations, assess potential impact of risk on the organization, identify gaps within the company's risk management programs, assist companies develop and implement risk assessment and risk management programs, and assist companies develop self assessment programs.

A unified philosophy on prevention

PwC has long considered that corruption creates an unstable business platform and interferes with business relationships on a global scale. PwC's commitment to fighting corruption is underscored by our long-term involvement in helping companies mitigate wrongdoing. PwC believes that comprehensive anti-corruption measures should be the bedrock of a company's business model. A corporation's business practices and sales practices are one and the same, and this mindset should be a fundamental philosophy of the sales and work process.

As businesses realize that prosecution for corruption charges can be devastating, now and in the future, preventing bribery and corruption is a sound long-term business strategy that every forward-looking company should embrace.

To learn more about anti-corruption services offered by PwC visit www.pwc.com/us/fcpa or contact:

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