

Audit Committee *Brief*



Navigating anti-corruption compliance

The first half of 2013 saw a significant increase in [Foreign Corrupt Practices Act](#) (FCPA)¹ enforcement actions and penalties, with a higher rate of cases brought by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) than in 2012.² Industries subject to recent enforcement actions include engineering; oil and gas; technology, media, and telecommunications; entertainment; and financial services.³ All industries, however, are vulnerable to corruption risk; prior cases have also involved hospitality companies (including hotels, casinos, and restaurants), aviation and transportation companies, and retailers and wholesalers.

¹ The FCPA, enacted in 1977, prohibits U.S. entities and individuals from corruptly providing, or offering to provide—whether directly or indirectly—anything of value to a foreign official to influence a decision, obtain or retain business, or secure an improper advantage. Amendments in 1998 extended its reach to include foreign persons or organizations involved in corrupt payments in the United States. In addition, the FCPA requires companies to make and keep accurate books and records and to devise and maintain a system of internal accounting controls.

² Gibson Dunn, 2013 [Mid-Year FCPA Update](#), July 8, 2013.

³ Shearman and Sterling, [FCPA Digest](#), January 2013.



“The audit committee plays a key role in assessing whether management has developed and is maintaining an effective compliance program to address corruption risk.”

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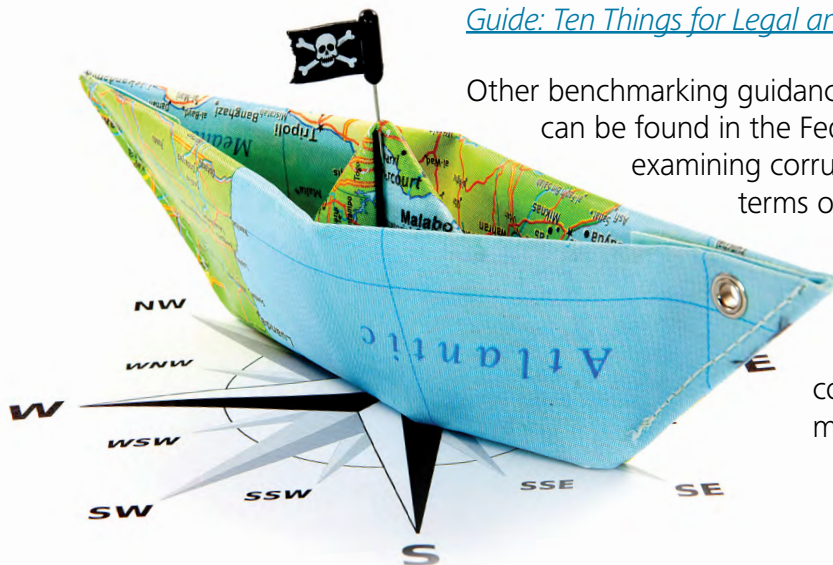
The U.S. government continues to apply expansive jurisdictional concepts in enforcing the FCPA. Even a single international or interstate text or email can implicate U.S. or foreign organizations and individuals in activities occurring outside the United States. Similarly, foreign nationals and organizations that may have “aided and abetted” or acted as an agent of a U.S. issuer can be held liable under the FCPA. Other countries have their own anti-corruption statutes, including the United Kingdom’s Bribery Act, the Eighth Amendment to the Criminal Law of the People’s Republic of China, Italy’s Law 231, and, most recently, Brazil’s Law 12.846.

Organizations implicated in anti-corruption violations may be subject to a host of serious consequences, including significant fines, reputational damage, weakened stock price, loss of business, and class-action suits. Companies with strong anti-corruption compliance programs are likely to be well positioned to prevent and detect potential violations, and to reduce or even avoid criminal and civil liability should a violation occur.

The audit committee’s role in assessing corruption risk

Audit committees are often directly involved in assessing whether management has developed and is maintaining an effective compliance program to address corruption risk. In order to execute this responsibility, the committee may perform an analysis to benchmark or stress test the company’s compliance activities relative to the anti-corruption framework outlined in the DOJ and SEC’s [guide](#). The guide offers a detailed summary of various facets and considerations associated with the FCPA, trends in enforcement cases, and other information useful in formulating a compliance program. Key takeaways for those charged with anti-corruption compliance programs are included in Deloitte’s report, [New FCPA Resource Guide: Ten Things for Legal and Compliance Officers to Consider](#).

Other benchmarking guidance for anti-corruption compliance programs can be found in the Federal Sentencing Guidelines and through examining corruption cases settled by the DOJ and SEC, the terms of which are publicly available. By benchmarking the compliance program, the audit committee may better understand what enhancements or changes, if any, the company should consider making to more effectively manage, monitor, and remediate corruption risks.

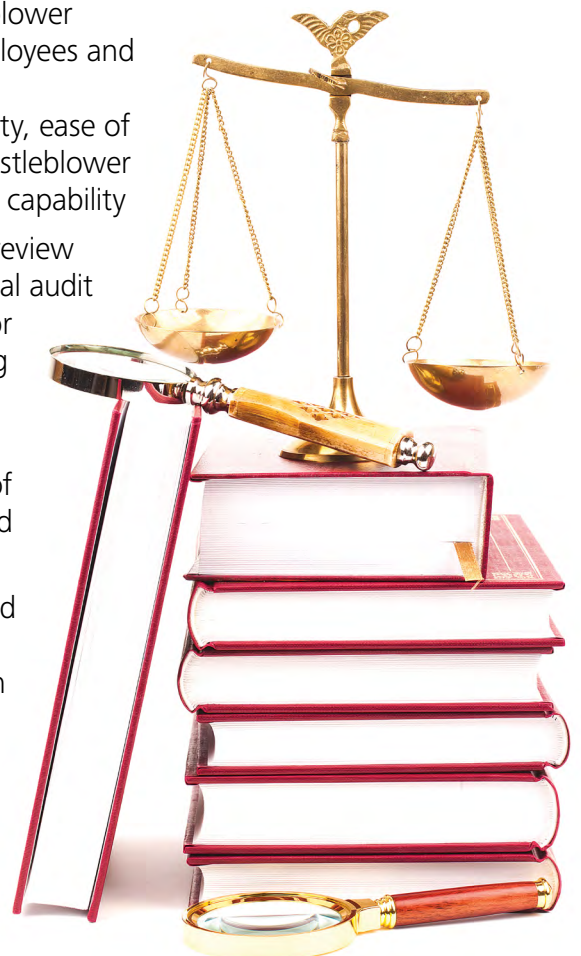


Questions on anti-corruption benchmarking for audit committees to consider

- Can we provide evidence to the DOJ and SEC that our compliance program is well designed, effectively overseen, and tailored to our size, structure, and risk profile?
- Are we conducting periodic anti-corruption risk assessments to evaluate and manage our corruption risk profile?
- Have we commissioned a third-party assessment of our compliance program to evaluate its effectiveness and identify areas for improvement?
- Do we provide country-by-country FCPA reinforcement training tailored to geography- and business-specific risks?
- How does management communicate its commitment to compliance (i.e., the “tone at the top”)? Do we have organization-wide surveys focused on ethics and compliance, and/or detailed employee focus groups to assess attitudes and awareness?

In evaluating the company’s anti-corruption compliance program, the audit committee should consider assessing likely critical components such as:

- The overall compliance structure, including the roles, resources, and responsibilities of the compliance, legal, and internal audit functions
- The thoroughness of the anti-corruption risk assessment, including the criteria to determine high-risk operations
- Policies and procedures covering riskier activities such as gifts, travel, entertainment, and charitable and political contributions provided to government officials
- Training protocols, including how training is monitored and assessed, as well as its method of delivery, frequency, and content; this could include training for new hires, managers, and employees with responsibility for business functions such as third-party due diligence or the approval of charitable contributions, as well as train-the-trainer efforts
- Protocols for third-party and distributor due diligence, including assessment of the sufficiency and quality of due diligence reports and how red flags are addressed
- The substance and frequency of senior management and regional compliance officer anti-corruption communications
- The nature of the whistleblower reporting systems for employees and third parties, including communications, anonymity, ease of use, frequency of use, whistleblower protections, and language capability
- Ongoing monitoring and review processes, including internal audit programs and protocols for investigation and reporting
- Policies regarding disciplinary and incentive procedures for violations of anti-corruption policies and procedures
- Anti-corruption merger and acquisition due diligence procedures, including both pre- and post-closing acquisition due diligence.





Elements of a successful anti-corruption compliance program

It is important for each board member to fully understand the components of an effective anti-corruption compliance program in order to assess its adequacy. For example, the program should be tailored to reflect the company's specific business operations, geographies, and areas of corruption risk based on a comprehensive assessment of quantitative and qualitative risk factors. An effective compliance program should also assign responsibility for oversight and implementation to a senior executive with the appropriate authority, adequate autonomy (often independent of legal and finance staff), and sufficient resources. Compliance oversight can also be included in the charter of the appropriate board committee, with a line-of-sight reporting relationship between the chief compliance officer and the committee chair. When assessing compliance programs, it is typical for authorities to consider whether the company devoted adequate staffing and resources given its size, structure, and risk profile.

It is worth noting that every FCPA action brought in both 2011 and 2012 involved the use of third-party intermediaries. As such, compliance programs should include protocols for performing third-party due diligence. An effective program includes a risk-based approach to determining which third parties should be subject to due diligence, the nature and extent of diligence performed, and the process to approve and mitigate identified risks.

Other key elements of an effective compliance program may include the development of policies and procedures and associated control activities covering corruption risks; training protocols, including how frequently the board is trained on anti-corruption matters; and communication protocols, including messages from the audit committee regarding the importance of always acting with honesty and integrity. Compliance programs should also include ongoing monitoring processes, such as focused internal audit and compliance reviews.

Authorities may grant significant credit to, or even decline to prosecute, companies with comprehensive and dynamic compliance programs that proactively seek to deter, detect, and investigate potential violations, and take meaningful action in response to discovered issues.

Conclusion

Corruption-related issues can arise from and potentially involve all parts of an organization, from employees to affiliates to suppliers. While recent trends suggest that FCPA enforcement has increased, guidance from regulators has provided clarity regarding proactive steps companies can take to mitigate their corruption exposure. An effectively designed, implemented, and managed compliance program tailored to a company's specific risk areas is paramount. The audit committee plays an integral role in confirming these objectives are met.



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Additional resources

[*New FCPA Resource Guide: Ten Things for Legal and Compliance Officers to Consider*](#)

[*Guarding against Fraud and Corruption: The Audit Committee's Role*](#)

In other news: PCAOB proposes new standards for auditor reporting

In an August 13, 2013, [release](#), the PCAOB proposed two standards calling for a significant expansion of the tailored information provided by auditors in association with financial statement audits. The proposal is in response to feedback from U.S. and global audit standard-setting constituents, including investor groups, that the auditor's reports do not contain enough information specific to a particular audit.



Among the changes proposed are the addition of a new section in which the most difficult and complex audit matters and judgments associated with a given audit would be communicated; enhanced language regarding the auditor's responsibilities; disclosures about auditor independence and tenure; and an expansion of the auditor's responsibilities for evaluating other information in the annual report.

The PCAOB is accepting comments from audit committees and other stakeholders on the proposal and is considering holding a roundtable in 2014 to discuss the standards and the comments received.

Deloitte's [September 5, 2013, Heads Up](#) provides further details on the proposed standards and their implications.