

CHECKLISTS

Checklist of Actions to Take and Factors to Consider When Conducting Pre-Merger Anti-Corruption Due Diligence

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I. High Level Risk-Based Assessment

In What Countries Does The Target Company Engage?

- Transparency International ranking
- Experience in that country
- The level of government involvement in business in those countries

What Are The Industry Risks?

- Has the industry been a focus of significant FCPA enforcement (such as oil and gas and telecom)?

What Is The Target's Business Model?

- Is it heavily reliant on licenses?
- Does it sell services to the government or state owned entities?

II. Targeted Due Diligence Questions

How Does the Target Company Conduct Business?

- What is the target company's business model in each of the respective countries in which it does business?
- Are licenses or other forms of government approval needed as part of the target company's business operations, including the process of obtaining those licenses or approvals?
- Do the target company's employees have relationships with local government officials?
- Do the target company's officers, directors, employees or friends and family members of the aforementioned hold any foreign government positions, serve on

any boards of directors for foreign government-owned entities, or are any of the aforementioned persons currently running for political office?

Is There Any Evidence of Prior Corrupt or Illegal Conduct?

- Has the target company been involved in investigations related to bribery of foreign government officials in the past?
- Has the target company ceased conducting business in any country and if so, what was the reason for ceasing business in that country and was it prevented from re-starting its business in that country?
- Has the target company previously been accused or convicted of violating any law (foreign or U.S.), if so, what were the circumstances; what was the outcome of any lawsuit or investigation; what happened to any individuals within the target company that were involved?
- Has the target company ever been the subject of any money laundering, or anti-kickback investigation by any government authority in the U.S. or abroad, including whether any fines or penalties were levied against the target company?
- Does the target company maintain records, including hotline logs, relating to allegations of corruption and whether a review of those records raises potential violations of the FCPA anti-bribery and record-keeping provisions?
- Has the target company previously conducted any internal investigation of impropriety involving bribery, money laundering or anti-kickback laws in the U.S. or abroad?

Does the Target Company Use Third Party Agents and Intermediaries?

- Does the target company engage agents, consultants, distributors, or third-party intermediaries to assist in its business?
- Do the third-party agents and intermediaries act as conduits for unsanctioned payments to foreign officials?
- Does the target company conduct due diligence of the agents and intermediaries it uses?
- Does that due diligence reveal (a) connections to foreign officials? (b) past violations of U.S. or foreign laws? (c) reputation for ethical conduct?
- How does the target company pay its third-party agents and intermediaries?
- Are those payments reasonable?
- Does the target company have written procedures relating to the due diligence review of its foreign agents, consultants, or third-party intermediaries?
- Are those procedures adequate and thorough?
- Does the target company maintain due diligence files and/or contract or engagement files for agents, consultants, or third-party intermediaries?
- Do those files provide any indication of potential FCPA violations?
- Does the target company conduct periodic reviews and certifications of its foreign

agents, consultants, or third-party intermediaries?

- Do those reviews or certifications provide any indication of potential FCPA violations?
- Does the target company maintain commission, retainer and expense reimbursement information for all persons who have acted as agents, consultants, or third-party intermediaries regardless of whether or not the target company executed a formal agreement with such persons?
- Does that information provide any indication of potential FCPA violations?
- Does the target company have audit procedures related to its agents, consultants, or third-party intermediaries' expenses, commissions, retainers, etc.?
- Do the results of those audits provide any indication of potential FCPA violations?

What Are the Target Company's Policies and Practices Pertaining to Gifts, Expenses and Charitable Donations to Foreign Officials?

- Does the target company provide anything of value, including hospitality, entertainment, gifts, or trinkets to foreign officials, officials of political parties, candidates for political office or the friends and family members of any of the aforementioned parties?
- Were those expenses reasonable?
- Were they properly recorded in the target company's books?
- Does the target company have written procedures relating to the approval of requests for expense reimbursements and were those procedures complied with in the context of these payments?
- Does the target company sponsor travel of foreign officials, their families, or friends?
- What were the circumstances surrounding those arrangements?
- Were the costs and expenses sponsored reasonable?
- How were those expenses recorded?
- Does the target company make any charitable, social or political contributions in the foreign countries in which it operates, and are those contributions legal and reasonable?

Does the Target Company Have an FCPA and Anti-Corruption Compliance Program?

- Is the program complete and thorough in light of the target company's home country?
- Is the program regularly updated?
- Is the compliance program effective and is it actually followed?
- Has the target company assigned responsibility for its compliance program to one or more high-level management employees?
- Based on interviews of those individuals with responsibility, are they effective

compliance persons?

- Does the target company conduct periodic internal compliance audits relating to potential FCPA anti-bribery and books and records violations?
- Will it provide the results of those audits?

For more from Gilbert and España on this subject, see “Critical Steps to Take and Questions to Ask When Conducting Pre-Merger Anti-Corruption Due Diligence,” The FCPA Report, Vol. 1, No. 5 (Aug. 8, 2012).

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