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The Long Reach of American Criminal Law: Why the United States Government Might Be Targeting Your Industry, Your Business and, Perhaps, Your Freedom

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It is a law that has traveled around the world and imposed billions of dollars in costs on international companies. It has caused many companies to conduct endless investigations of their own operations, fundamentally change the way they do business, and fire countless executives and other employees. It has even forced some individuals to spend years in prison cells several thousand miles away from home. And now, in the most recent development, the law promises a potentially enormous financial reward to nearly anyone – company employees, competitors or even unhappy spouses – who can provide original information that allows the U.S. government to successfully prosecute a company or individual for foreign bribery.

On every continent, every general counsel must be familiar with American criminal law even if their company has no significant presence in the United States. This is particularly true for America's foreign bribery law. It is now commonplace for United States law enforcement authorities to target non-U.S. companies (including non-U.S. subsidiaries of U.S. companies), officers, directors, employees, and lawyers for criminal prosecution and imprisonment in the United States. In the last five years alone, the United States has brought or threatened to bring criminal charges against companies worldwide, both large and small, including BAE Systems plc, Siemens AG, ABB Ltd., Alcatel-Lucent S.A., Daimler AG, Statoil ASA, and Renault Trucks SAS. More to the point, the United States Department of Justice has

begun seeking the imprisonment of individuals, including non-U.S. citizens with only incidental connections to the United States.

The prosecution of Christian Sapsizian, a French citizen, symbolizes this new era of aggressive U.S. law enforcement. In 2001, Sapsizian, a Paris-based employee of an Alcatel subsidiary, helped his employer win a $149 million contract with the Costa Rican government to develop a mobile telephone network. Over the next two years, Sapsizian and others from Alcatel directed Alcatel's local Costa Rican agent to send $2.56 million to a Panamanian bank account held by the wife of a Costa Rican government official. That government official sat on the committee responsible for awarding the contract to Alcatel. The payments fulfilled an agreement that Sapsizian struck with the government official before the $149 million contract was ever awarded to Alcatel.

Throughout this process, Sapsizian had little contact with the United States. He and Alcatel were based in Paris. Alcatel's third party agent, the local government officials, and the contract's place of performance were all in Costa Rica. The third party agent paid the foreign official from a Costa Rican bank account. The foreign official's bank account was in Panama. None of the bribery discussions appear to have taken place in the United States. In charging Sapsizian, the Justice Department recited only three connections to the United States: (1) Alcatel's payment department sent wire transfers to the Costa Rican agent from a New York bank account; (2) the payments from the agent's Costa Rican bank account to the foreign official's Panamanian bank account happened to be routed through a Miami bank; and (3) Alcatel securities were registered with the U.S. Securities and Exchange Commission ("SEC") and traded on the New York Stock Exchange.

Even these limited connections were enough to land Sapsizian in a U.S. prison cell. While he was travelling from Latin America to Paris in 2006, his commercial flight stopped in Miami. As he was waiting to go home, U.S. government agents intercepted and arrested the sixty year-old Sapsizian. The United States charged Sapsizian with violating the U.S. Foreign Corrupt Practices Act of 1977 ("FCPA"), conspiring to violate the FCPA, and conspiring to violate U.S. money laundering laws (which prohibit the transfer of money across U.S. borders in order to promote foreign bribery). Sapsizian pleaded guilty, cooperated with the Justice Department for over two years while he was required to live in the United States, and extensively debriefed the United States about Alcatel's worldwide practices.

In recognition of Sapsizian's extensive cooperation, the court sentenced Sapsizian only to thirty months in a U.S. prison. Without this cooperation, his prison sentence would likely have almost doubled under the applicable sentencing guidelines. Following Sapsizian's cooperation, the company negotiated a $137 million settlement with the Justice Department and the SEC to resolve the criminal investigation and related civil proceedings concerning Alcatel's worldwide sales practices. Nearly five years after his arrest, Sapsizian was released from prison in March 2011.

The Sapsizian case exemplifies a prosecutorial trend that we believe will intensify in the coming months and years. The U.S. Justice Department has advanced aggressive theories of U.S. criminal law that would allow for prosecution of companies and individuals involved in nearly any business transaction that has any connection to the United States. If a payment in furtherance of a bribery scheme passes through a United States bank, the Justice Department will not hesitate to bring charges against those responsible, wherever they may be. The same is true if someone involved in a bribery scheme sends an e-mail or a fax transmission or makes a

telephone call to or through the United States. And if one person in the scheme becomes subject to criminal jurisdiction in the United States, this may allow the government to assert criminal jurisdiction over everyone else in the scheme under the theory that they are all co-conspirators. With the advances of modern-day technology, it has never been easier to become the target of criminal prosecutors in the United States.

Through diplomacy, the United States has removed many obstacles that once made the question of long-arm prosecutions into a theoretical exercise. At the United States' behest, foreign countries have agreed:

- to make critical evidence available through mutual legal assistance treaties;
- to set aside bank secrecy statutes and other local privileges that would otherwise preclude the production of sensitive information needed to reveal the existence of foreign bribery;
- to allow for the extradition of individuals accused of foreign bribery to the United States; and
- to enter into treaties in which each member country agrees to adopt foreign bribery laws and to enforce them vigorously.

The United States now has an unprecedented ability to obtain the evidence necessary to prosecute and, just as importantly, to force foreign companies and citizens to appear in an American court.

None of this would be possible if the world's view on foreign bribery had not undergone a seismic shift. From 1977 until 1997, the FCPA essentially stood as the world's only anti-foreign bribery law and the United States was derided in many circles for enacting what was characterized as an idealistic and imperialistic criminal statute. Foreign bribery was widely viewed as a cost of doing business and, in many countries, was expressly permitted to be written

off as a tax deduction. When it stood alone, the United States had limited ability to persuade other countries to provide the cooperation it needed to bring indictments against non-U.S. companies and individuals.

That began to change in December 1997 when thirty-four countries, including many of the world's major economic powers, signed the OECD Convention on Combating Bribery of Foreign Public Officials In International Business Transactions ("OECD Convention"). In the OECD Convention, each country agreed to criminalize foreign bribery. These countries further agreed to cooperate in the investigation of foreign bribery, to make foreign bribery a predicate act for any money laundering statute in their country, and to extradite individuals accused of foreign bribery. With the advent of the OECD Convention and similar treaties that followed, it could no longer be claimed that the criminalization of foreign bribery was a quixotic American notion.

As to be expected for such a monumental shift, it has taken the better part of a decade for much of the rest of the world to develop the legislative framework, the prosecutorial expertise, and the will to prosecute foreign bribery. For example, twelve years after it became a signatory to the OECD Convention, the United Kingdom passed the UK Bribery Act, a comprehensive anti-bribery statute that replaced the patchwork set of laws that it previously applied to foreign bribery. Non-U.S. countries have begun prosecuting foreign bribery and have been doing so successfully. It is not an anomaly that the investigation leading to the largest FCPA settlement to date – the $1.6 billion settlement by Siemens AG – was initiated by Munich prosecutors, not U.S. prosecutors.

The United States, however, still leads the world in foreign bribery prosecutions. Last year, Lanny Breuer, the Assistant Attorney General in charge of the Justice Department's

Criminal Division, reported that the United States was pursuing more than 140 FCPA investigations. In 2009 and 2010, the United States has indicted more than fifty individuals. In 2010 alone, the Justice Department and the SEC settled enforcement actions with non-U.S. companies requiring fines, penalties, and/or disgorgement in the amounts of $400 million (BAE Systems plc), $365 million (Snamprogetti Netherlands B.V.), $338 million (Technip S.A.), $185 million (Daimler AG), and $58 million (ABB Ltd.).

Emboldened by its successes, the Justice Department now is willing to use some of its sharper investigative tools in pursuing foreign bribery investigations. For instance, at the end of 2009, the Justice Department brought indictments against 22 individuals, including citizens from the United Kingdom and Israel, who sold military and law enforcement products. These individuals were charged with conspiring to bribe an African official in an attempt to win lucrative government contracts.

This case, however, had been a set-up from the beginning. There was no African government official and there was no contract to be won. Two undercover law enforcement agents pretended to be intermediaries for an African official while they sought to build criminal cases against the investigation's targets. In commenting on these indictments, Breuer stated that "[t]he message is that we are going to bring all the innovations of our organized crime and drug war cases to the fight against white-collar criminals."[2]

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the United States has also dangled significant financial incentives for employees of companies, both domestic and abroad, to report evidence of foreign bribery. In particular, Congress has established a bounty program allowing whistleblowers with original information about violations of U.S. securities laws (including foreign bribery laws) to recover no less than

[2] Diana B. Henriques, *FBI Charges Arms Sellers with Foreign Bribes*, N.Y. Times, Jan. 21, 2010, at A3.

10 percent and no more than 30 percent of the U.S. government's ultimate recovery in any prosecution or settlement. To put this number in perspective, in a billion dollar foreign bribery case, a whistleblower might be entitled to receive as much as $300 million from the U.S. government. In the smallest cases eligible for the reward (cases with a recovery of $1 million), a whistleblower could still earn between $100,000 and $300,000.

Although there are statutory and administrative limitations on who can recover (a whistleblower is out of luck if he or she is convicted in the bribery scheme, for instance), there are usually a number of people in every case with the knowledge and now the strong incentive to report the company to the Justice Department. Employees may see little downside to providing information to the U.S. government and the new law even allows them to do so anonymously. Indeed, it would be unsurprising if these financial incentives caused plaintiffs' lawyers to search out potential whistleblowers in the hopes of securing a relatively easy payout.

The new bounty program will therefore increase the pressure on international companies. Prior to this program, generally speaking, there was no compelling reason or incentive for whistleblowers to turn to the United States government, particularly when the information was about an international company that did not seem to have any significant connection to the United States. That will not be true anymore. Blowing the whistle to the United States government might be viewed as a ticket to the lottery, inexpensive to play and very lucrative to win.

As the United States has gained the power to pursue foreign companies and citizens, however, it must be selective in the cases it prosecutes. Despite the 2007 creation of a team of FBI agents dedicated to investigating foreign bribery, the United States does not have unlimited resources. The United States must pick and choose the cases that it believes will

create the greatest impact in the fight against bribery. Although a significant risk of prosecution exists for any non-U.S. company or individual involved in a bribery scheme touching the United States, an examination of existing cases provides an interesting look at how the Justice Department has exercised its prosecutorial discretion. If what's past is prologue, those at a greater risk of prosecution may include:

- companies whose securities are traded in the United States;
- companies in industries with widespread corruption;
- middlemen who facilitate bribe payments;
- companies whose prosecution might be used to send a message; and
- non-U.S. citizens affiliated with any company with any U.S. connection.

Companies Whose Securities Are Traded in the United States

The Justice Department has closely scrutinized non-U.S. companies with securities registered with the SEC and traded on a U.S. stock exchange. The Justice Department first filed FCPA charges against a foreign issuer, the Norwegian oil company Statoil ASA, in October 2006. Statoil, whose securities were traded on the New York Stock Exchange in the form of American Depository Receipts, was charged under the FCPA with bribing a foreign official and with falsifying its books and records. The United States alleged that Statoil had paid $5.2 million to an Iranian government official in order to obtain a participation interest in the development of an Iranian state-owned oil field.

In describing the charges against Statoil, one senior Justice Department official warned that "the Department will not hesitate to enforce the FCPA against foreign-owned

companies, just as it does against American companies."[3] Statoil settled the case by entering into a deferred prosecution agreement in which it agreed to pay a penalty of $10.5 million, employ a corporate monitor satisfactory to the Justice Department for three years, and cooperate fully with the Justice Department's investigation. Statoil upheld its end of the bargain and the Justice Department dropped the charges in 2009.

The Statoil case illustrates another danger for international companies listed on a U.S. stock exchange. U.S. law requires any such company to "make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the [company]." 15 U.S.C. § 78m(b)(2)(A). Criminal liability can arise for any company or person who knowingly circumvents or knowingly fails to implement a system of internal accounting controls or knowingly falsifies any such book, record, or account. 15 U.S.C. § 78m(b)(5). Because Statoil recorded the bribe payments as commissions and not as bribe payments, the Justice Department charged Statoil with falsifying its books and records.

Since October 2006, the Justice Department has prosecuted numerous foreign companies listed on an American stock exchange or their subsidiaries. The Justice Department believes that any company that has enjoyed the benefits of the U.S. capital markets also bears the burden of complying with United States law. It believes the same is true for "foreign executives who work for U.S. corporations or for foreign corporations that trade on U.S. exchanges."[4] Indeed, prosecutions of non-U.S. companies and non-U.S. citizens in these circumstances have

[3] Alice S. Fisher, Assistant Attorney General, United States Department of Justice, Remarks at the American Bar Association National Institute on the Foreign Corrupt Practices Act (Oct. 16, 2006).

[4] Lanny A. Breuer, Assistant Attorney General, United States Department of Justice, 3rd Russia and Commonwealth of Independent States Summit on Anti-Corruption (March 16, 2011).

become so commonplace that Breuer recently referred to them as "traditional[]" FCPA prosecutions.[5]

Companies in Industries with Widespread Corruption

The Justice Department has begun targeting industries, not just individual companies, in which widespread corruption is suspected. On November 12, 2009, Assistant Attorney General Breuer announced that the Justice Department would be focusing on prosecuting commercial bribery in the pharmaceutical industry. One advantage of an industry-wide investigation is to level the competitive playing field and prevent some companies within an industry from gaining a competitive advantage over others through the use of corrupt payments. A non-U.S. company in a targeted industry is therefore at a heightened risk of prosecution if it is gaining an advantage over a U.S. company by paying bribes.

In announcing the initiative against the pharmaceutical industry, Breuer described some of the reasons why an industry may be targeted by the Justice Department. The pharmaceutical industry often has to operate in countries where the health systems are regulated, operated and financed by foreign governments. Pharmaceutical companies therefore have to deal extensively with foreign government officials and, depending on the culture of the particular country, may be expected to bribe in order to obtain or retain business.

In some ways, this Justice Department initiative is not new. Even without a concerted effort in the past to target industries, U.S. investigations have tended to gravitate to those industries in which corruption is perceived to be extensive, including oil and gas, telecommunications, and government contracting. The natural result of those efforts resulted in the prosecution of non-U.S. companies such as Statoil. We expect the Justice Department to include non-U.S. companies in any industry-wide investigation.

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5 *Id.*

The Middleman

There are indications that the Justice Department is increasingly looking to charge non-U.S. citizens used by companies to pay bribes. The Justice Department has recognized that the use of intermediaries is often essential to an American company's ability to hide the existence of bribe payments. Without a middleman, the existence of bribe payments would be apparent to inside or outside auditors or to anyone else who might examine the company's books and records. By making an example of non-U.S. intermediaries, the Justice Department may force foreign citizens to think twice before agreeing to help companies bribe.

Jeffrey Tesler, a sixty-two year old English solicitor, is one example of a non-U.S. intermediary charged with violating the FCPA. Tesler was indicted for allegedly directing bribe payments to Nigerian government officials on behalf of a joint venture seeking to secure lucrative contracts with a second joint venture controlled by the Nigerian government. One member of the joint venture represented by Tesler was the American company Kellogg, Brown & Root, Inc., which is headquartered in Texas. The Justice Department principally used this connection to assert criminal jurisdiction over Tesler and to bring the indictment against Tesler in Houston. As in the Sapsizian case, the indictment cites the same types of tenuous connections to the United States – wire transfers through U.S. banks and an e-mail sent to Tesler from a server in Houston – as a basis for asserting jurisdiction. Tesler was extradited to the United States by his own country and has subsequently pleaded guilty to two FCPA charges.

Companies Whose Prosecution Would Send a Message

The Justice Department also appears to take a more aggressive stance when it believes that instances of foreign bribery are not being investigated aggressively enough by other countries with stronger connections to the underlying conduct. For instance, after the United

Kingdom announced in 2006 that it was suspending a highly publicized foreign bribery investigation of BAE Systems plc for fear of damaging the country's diplomatic relations with Saudi Arabia, the Justice Department filled the void by taking up its own investigation and detaining BAE's chief executive officer for questioning. In February 2010, the Justice Department charged BAE with defrauding the United States by failing to fulfill earlier promises that it would enact a compliance program designed to detect foreign bribery violations. As part of the resolution of the case, BAE has agreed to pay a $400 million fine to the United States. BAE also agreed to pay a £30 million fine to the United Kingdom to settle other foreign bribery investigations not involving Saudi Arabia. If there is an enforcement vacuum in other countries that have not adopted a foreign bribery law or are not aggressively enforcing their existing laws, companies headquartered in those countries and their employees potentially represent an attractive target to the Justice Department.

Individuals Affiliated With Any Company With Any U.S. Connection

When the Justice Department believes that a company has engaged in foreign bribery, its prosecution efforts will not stop with the company. The Justice Department generally expects to charge individuals with crimes. As Assistant Attorney General Breuer has stated, "prosecution is a cornerstone of our enforcement strategy"[6] and "for our enforcement efforts to have real deterrent effect, culpable individuals must be prosecuted and go to jail . . . ."[7] The penalties for individuals can be potentially devastating: the Justice Department obtained an 87-month prison sentence for an individual convicted of participating in a bribery scheme in Panama and of lying to the U.S. government.

[6] Lanny A. Breuer, Address to the 22nd National Forum on the Foreign Corrupt Practices Act (Nov. 17, 2009).

[7] Lanny A. Breuer, Keynote Address to the Tenth Annual Pharmaceutical Regulatory and Compliance Congress and Best Practices Forum (Nov. 12, 2009).

The Justice Department has already charged numerous non-U.S. citizens employed by or affiliated with both domestic and foreign companies. The Justice Department has brought foreign bribery indictments against citizens from the United Kingdom, France, Italy, Switzerland, the Netherlands, the Czech Republic, Japan, South Korea, Canada, Mexico, Costa Rica, Israel, and Lebanon. Indictments have been brought against non-U.S. citizens regardless of their position in the company. Chief executive officers and low-ranking sales agents have been charged alike.

The Justice Department has also charged employees without necessarily bringing charges against the employer. For instance, Bridgestone executive Misao Hioki, a Japanese citizen living in Tokyo, was charged with conspiring to pay bribes to government officials so that Bridgestone, a Japanese company, could obtain business in Latin America. To establish the jurisdictional nexus for the foreign bribery charge, the United States relied principally on the allegation that Hioki and others at Bridgestone corresponded by e-mail with employees of Bridgestone's U.S. subsidiary in Houston about the projects which were the subject of the corrupt payments.

Hioki's case also serves as a powerful reminder that the U.S. anti-bribery law is not the only criminal statute to extend beyond U.S. borders. The Justice Department discovered Hioki's bribery scheme only as a result of a wholly unrelated antitrust investigation. In that investigation, the Justice Department's Antitrust Division was examining whether Hioki had agreed with others to fix prices in the marine hose market in the United States and elsewhere. As a result of that antitrust investigation, Hioki was charged with conspiring to violate the U.S. antitrust law known as the Sherman Antitrust Act, and the Antitrust Division referred the evidence of bribery to the Justice Department's Fraud Section, which is responsible for

conducting foreign bribery investigations. Hioki pleaded guilty to both the antitrust and bribery charges and served a two-year sentence in a federal prison in California. Almost a year after Hioki finished serving his prison sentence, the Justice Department then charged Bridgestone with antitrust and FCPA violations, to which Bridgestone pleaded guilty and agreed to pay $28 million in criminal fines.

The Agony of Being Investigated

Anyone who draws scrutiny from the Justice Department will find the experience both costly and uncomfortable. There are the obvious costs. Companies see million and billion dollar settlements and have to worry whether they are next. An indictment can bring substantial reputational risk, threaten the company's financial stability, and, in some cases, cause the demise of the company. Individuals have to worry if their own country will seek to prosecute them or extradite them to the United States. Even if individuals do not fear prosecution in their home country, they run the risk of being arrested and imprisoned every time they travel abroad. For an individual, the existence of a sealed arrest warrant or an Interpol Red Notice is usually not clear until after the police have arrived.

There are substantial costs that many companies do not anticipate when they become enmeshed in a foreign bribery investigation. For instance, the Justice Department has stated that it will provide credit, in the form of leniency, to companies that cooperate in the investigation of misconduct. It is therefore often in the best interest of companies to conduct their own internal investigations into potential misconduct. Although the scope of the investigation will depend on individual circumstances, an internal investigation team will typically interview employees and any other individuals with knowledge of the relevant conduct,

examine all of the related documents (including e-mail), and analyze the company's financial records.

These investigations, which require the retention of experienced lawyers and forensic accountants, can be time-consuming, distracting, and expensive for the company. In the most extraordinary case, Siemens paid several hundred million dollars to a private law firm and an accounting firm to conduct a two-year internal investigation. Of course, an internal investigation of a conglomerate such as Siemens, with 440,000 employees spread throughout the world and facing allegations of systematic corruption, is not the ordinary situation confronting most companies.

Even for Siemens, its large investment paid off. It and three of its subsidiaries still had to plead guilty to FCPA violations. It had to pay €596 million to the public prosecutor in Munich and another $350 million in the disgorgement of profits to the SEC. Because of Siemens' cooperation and a number of other factors (including the payments Siemens had to make to other regulatory authorities), however, the Justice Department agreed to accept a criminal fine of $450 million, far less than the criminal fine of $1.35 billion to $2.7 billion that U.S. sentencing guidelines otherwise would have recommended.

When wrongdoing is discovered, companies often seek a non-prosecution or deferred prosecution agreement with the Justice Department in the hopes of dissuading the Justice Department from pursuing a criminal conviction (as it did in the case of Siemens). In a deferred prosecution agreement, the Justice Department will file criminal charges against the company in a formal court pleading, but agree to defer the prosecution for a set period of time (usually a number of years). In return, the company typically must agree to (1) cooperate with the government's investigation; (2) admit facts showing the company engaged in a criminal

offense; (3) pay a criminal fine or penalty; (4) surrender any gains won from illegal acts; and (5) undertake a series of reforms. A non-prosecution agreement is structured in the same way, except that criminal charges will not usually be filed with a court.

These agreements often benefit the company – but at a significant cost. If the Justice Department is satisfied with the company's performance during the term of a deferred prosecution agreement, it will move to dismiss the criminal charges. If the company breaches the agreement, on the other hand, the Justice Department will be free to pursue a criminal conviction. In that situation, the company has little chance of success at trial because it has already admitted that it engaged in criminal activity. Needless to say, once a company enters into an agreement with the Justice Department, that company does not have a significant amount of negotiating leverage.

Even if the company is successful in obtaining a non- or deferred prosecution agreement, the unanticipated and significant costs and government involvement do not necessarily end. The Justice Department often demands that the company agree to hire a "monitor" – a third party mutually agreeable to the company and the Justice Department – whose job will be to examine the company's compliance record and policies and to recommend reforms, all at the company's expense. The monitor, who must be retained for a specific number of years, periodically reports its findings and recommendations to both the company and the Justice Department. The monitor also reports to the Justice Department whether the company accepts or rejects the monitor's recommendations. The Justice Department then considers the company's response to those suggestions in considering whether the company has fulfilled its end of the agreement. Whether a monitor will be imposed depends on the case: with more frequency,

defense lawyers have been successful in arguing against the installation of a monitor. It remains to be seen whether that will be true in the future.

The Best Defense: A Strong Compliance Program

To avoid the trauma of an investigation and potential prosecution, all prudent company lawyers need to act to protect their companies and themselves. For any company, a well-conceived and well-executed compliance program is the best protection against a foreign bribery investigation. Such a program demonstrates to the Justice Department that the company is a responsible citizen and that the company's culture does not encourage and is not conducive to misconduct. It also shows that the company has attempted to uncover any bribery by its employees and, even if the company's efforts are unsuccessful, it will show the Justice Department and other prosecutors that the company has a strong system of internal controls designed to prevent misconduct. If bribery is discovered within the company, the company needs to consult with counsel and take corrective action immediately.

The content of an appropriate compliance program depends on the company's circumstances. Compliance programs typically include significant training for employees about the prohibitions against bribery, rigorous auditing of the company's financial records, a careful examination of the company's use of consultants and subcontractors, and a deep understanding of its contracts in countries with a higher risk of bribery. The Justice Department has specifically warned companies to be aware of "red flags" when negotiating a business relationship with a joint venture partner or an agent in a foreign country. Those red flags include:

- unusual payment patterns or financial arrangements;
- a history of corruption in the country where the business is sought;

- a refusal by a foreign partner or agent to provide a certification that it will not engage in bribery;
- unusually high or commercially unreasonable commissions;
- a lack of transparency in expenses and accounting records;
- an apparent lack of qualifications on the part of the joint venture partner or agent to perform the services offered; and
- whether the joint venture partner or agent has been recommended by an official of the potential governmental customer.

As a starting point, any responsible compliance program must be attuned to these types of issues.

Foreign bribery cannot be the only focus of a company's compliance program. Any reasonable compliance program must be designed to detect a broad array of criminal conduct. In addition to foreign bribery, examples of U.S. laws that could apply extraterritorially include criminal statutes involving antitrust, money laundering, export and import control, terrorism, government contracts, corporate espionage, and any type of fraud.

There is no one-size-fits-all compliance program. What is appropriate for a large company may not be so for a smaller company. What is appropriate for some industries may not be so for others. However, if there is evidence of bribery or other wrongdoing in a company, one of the Justice Department's first questions will be whether the company had a compliance program and, if so, why it did not work. The absence of an effective compliance program places the company in a precarious position at the start of any investigation.

When a company learns internally of a foreign bribery issue or that the U.S. government has begun a foreign bribery investigation, there are many complex judgments that must be made on how to proceed. The company will be faced with issues of whether to self-

report to the U.S. government or to any other government, whether to cooperate with the U.S. prosecutorial authorities, how to define the scope of any internal investigation, how to comply with the law in its own country (including data privacy laws) in conducting any investigation, whether to take disciplinary action against any employees, whether the company's compliance policies and procedures need to be revised, and whether there are reporting obligations to outside auditors or in securities filings. And the list goes on. The only certainty is that a company with a strong compliance program will fare better in the end. This is especially true in this era of aggressive foreign bribery investigations in the United States.