



Wednesday, October 27
9:00am-10:30am

903 - Know Your Vendor

Chris Dewees

Vice President & General Counsel
Hitachi Global Storage Technologies, Inc.

Diane Georgi

Vice President, Corporate Counsel
Harmonic, Inc.

Michael Marinelli

Shareholder
Greenberg Traurig LLP

Wendy Schmidt

Principal, National Leader Business Intelligence Services
Deloitte Financial Advisory Services LLP

Mark Wolf

Assistant General Counsel
FMC Technologies, Inc.

Faculty Biographies

Chris Dewees

Chris Dewees is general counsel for Hitachi Global Storage Technologies. There he manages the Company's legal and IP affairs, recently leading the company's first two acquisitions in its history.

Previously, Mr. Dewees served as the chief legal officer and head of Corporate Development at JDSU, where he oversaw JDSU's legal affairs and strategic transaction activities. While at JDSU, Mr. Dewees assumed increasing responsibility for the Company's legal, governance and strategic activities, including managing JDSU's successful \$20 Billion federal securities class action and multiple M&A transactions.

Prior to joining JDSU, Mr. Dewees practiced law at Morrison & Foerster, LLP, working in the firm's San Francisco, New York, and Palo Alto offices. While at Morrison & Foerster, Mr. Dewees represented Silicon Valley public and private companies in mergers, acquisition, public securities offerings, and venture financings, among other things.

Mr. Dewees earned his AB from Dartmouth College and his JD from Northwestern University.

Diane Georgi

Diane Georgi is vice president and corporate counsel at Harmonic Inc. Ms. Georgi is responsible for managing all legal functions of the company. Harmonic Inc. is a NASDAQ listed company based in Silicon Valley, CA, and is a leading provider of video delivery solutions to broadcast, cable, satellite, Internet, mobile, and telco video service providers worldwide.

Prior to Harmonic Ms. Georgi worked at a Silicon Valley high technology start-up, and prior to that worked at Digital Equipment Corporation (DEC).

Ms. Georgi is a member of the California Bar Association and has assisted the La Quinta Arts Foundation.

Ms. Georgi received a BA from the University of California Santa Barbara and an MBA and law degree from Santa Clara University.

Michael Marinelli
Greenberg Traurig LLP

Wendy Schmidt

Wendy Schmidt is a principal in the New York office of Deloitte Financial Advisory Services, LLP, and is the national service line leader for the Business Intelligence Services practice. A former litigator, Ms. Schmidt specializes in developing background information on people and entities worldwide. Utilizing online and Internet sources, along with traditional field investigative techniques, she is able to develop background information and intelligence virtually anywhere in the world. Her work includes sensitive investigative due diligence for financial and strategic buyers in domestic and international transactions. Ms. Schmidt utilizes these same skills to provide litigation support in complex business disputes and support in FCPA and internal investigations. Her clients include government agencies, international and domestic law firms, corporations, and financial institutions.

In addition to serving clients, Ms. Schmidt serves on Deloitte Touche Tohmatsu's steering committee for the Global Retention of Women, and is a former national leader of Deloitte's US Women's Initiative Network (WIN). In her role as a global WIN leader, Ms. Schmidt is responsible for the development and oversight of programs aimed at the retention, promotion, and recruitment of women. Ms. Schmidt is a member of the executive board of directors of the National Association of Women Lawyers and is also a board member and past president of the New York City chapter of the Juvenile Diabetes Research Foundation International.

Ms. Schmidt attended Yale College and Northeastern University School of Law.

Mark Wolf

Mark Wolf is assistant general counsel managing the worldwide legal affairs for FMC Technologies' Energy Processing and Surface Wellhead divisions. In addition, he has task force oversight responsibility for the company's compliance program and also manages FMC's closed business litigation portfolio.

Mr. Wolf practiced law with the Kansas City-based law firm of Stinson Morrison & Hecker. He came to Houston, Texas with Noble Drilling Corporation and then Nabors Drilling International before arriving at FMC. He is a CPA, practicing accounting for several years before becoming an attorney. Mr. Wolf has considerable experience as a corporate attorney primarily in the areas of commercial counseling, compliance, acquisitions & divestitures, litigation management, and risk management.

Mr. Wolf is a frequent speaker and author in many areas of the law as well as law department practices. He is an active member in the Texas General Counsel Forum (TGCF) and a ACC's Houston Chapter's board of director where he leads the chapter's Small Law Department Management Practice Group.

A graduate of Penn State University, Mr. Wolf earned his law degree from the University of Arkansas at Little Rock.

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Course Agenda

- Introductions
- Hypothetical Scenarios
- Why is it Important to Know Your Vendor?
- Best Practices: Three Approaches
- Nuts and Bolts of Conducting Background Investigations
- How Much Due Diligence is Enough?

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Hypothetical scenario:

- ABC Net, Inc. (ABC) is a U.S. manufacturer of medical devices sold to medical institutions and professionals, including government-owned entities and employees, in 120 countries. Its products are sold through distributors and sales intermediaries (agents). ABC is public company traded on the NY Stock Exchange.
- As a result of a government investigation into industry practices, one of the company's VP of sales was arrested and charged with bribing a foreign official to obtain a supply contract. Upon learning of the Department of Justice enforcement action, the company pledged to fully cooperate with law enforcement.

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Hypothetical scenario: (cont.)

- In the first phase of conducting background investigations on suppliers and agents, potential red flags were identified for 25 agents, all of which were also located in countries ranked high on Transparency International's Corruption Perceptions Index (CPI). Further, with regard to one of these entities, XYZ Co., a review of the contract whereby XYZ Co. was importing 100 devices for sale to a state-owned hospital in Thailand, revealed that a 1% import duty and processing fee, a standard fee in Thailand, was to be paid by ABC Co. However, these fees are typically paid by the importer, not the manufacturer.

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Why is it Important to Know Your Vendor?

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- Is this a "real" Vendor with a business profile and is it experienced in the relevant industry?
- Is the Vendor owned by your employees, or have other potential conflicts of interest?
- Does the vendor, or its principals, have a track record of bankruptcy or solvency issues that might threaten the supply chain?
- Does the Vendor, or its principals, have a history of serial litigation, counterfeiting, child labor, or product safety issues?
- Is the Vendor associated with organized crime, terrorist groups, money laundering, bribery, or corruption?
- Is the Vendor located in a country restricted by U.S. law from receiving payment, or does the Vendor appear on lists of restricted entities and individuals?

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**Best Practices:
 FMC Technologies, Inc.**

Mark D. Wolf, Assistant General Counsel

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Intermediaries - IOSP

- Intranet Order Screening Process (IOSP) ("home – grown" product)
- Five-step or five-screen process:
 - Ineligible parties screen - automatically searches Commerce Department's Table of Denial Orders and Treasury Department's / OFAC's specially designated nationals and blocked persons lists
 - Know your customer screen (31 questions)
 - Embargoed country screen
 - Product classification screen (ECCN v. EAR 99)
 - Anti-boycott compliance screen
- Automatic e-mail sent to general counsel if any step fails

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Intermediaries – Risk Assessment

- Hotline (EthicsPoint) identified issues (current and historical)
- Transparency International (CPI)
- Country inbound and revenues (current and historical)
- Forecasted country growth
- Customer National Oil Company Relationships
- Conduct independent investigation for high-risk intermediaries (JV partners)
- Increases defensibility of process and due diligence independence
- Business unit pays for/absorbs external investigation costs

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Intermediary – Certifications

- FCPA Disclosure Questionnaire (14 questions) / Certifications
- Certifies to their awareness and agreement to our company's policies prohibiting bribery and improper payments
- Certification language comes straight out of our company Principles of Integrity (tone starts at the top)
- Annual FCPA re-certifications
- Business unit is responsible for the process-related costs
- Legal department checks annually via business unit certification process

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Intermediary Disclosure Questionnaire
Red Flags

- Country Location
- Bad Reputation
- Commission Amount / Terms
- Refuses to Give Assurances
- Relationship by Blood to Official
- Ties to Government
- Line of Business
- Payment Terms & Location
- Cash Payments
- Large Success Bonuses
- Negative Public / Media Reports
- Not Disclosing Shareholders or True / Beneficial Ownership
- Quality of Business References

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Intermediary & Freight Forwarders - Contracts

- Only use legal department's form intermediary or forwarder contract
- Annual contracts (no automatic renewal / no evergreen contracts)
- Business unit responsible for the process, but legal & internal audit departments check annually
- Consolidated / reduced forwarders worldwide to approved handful
- Forwarder agreement makes global brokers responsible for actions of local brokers (just like typical contractor / subcontractor)
- Forwarders contractually agree be bound by our compliance policies

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A Word About Payments + Commissions

- Third country payments (other than country of business) requires specific and separate approval of General Counsel
- Concerns:
 - Foreign exchange evasion
 - Tax evasion
 - Cash offshore for illicit purposes
- Commission levels reasonable for country and product involved
- Commission levels exceeding a certain percentage require notification to divisional controller for further review and approval

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Next Steps

- Process existing, non-high-risk intermediary portfolio
- Add intermediaries / freight forwarders to desktop training (SAI Global)
- Consider in-person training (high-risk intermediaries / freight forwarders)

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Best Practices: Hitachi Global Storage Technologies, Inc.

Chris Dewees, Vice President & General Counsel

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Qualification and Risk Assessment – OEM Customers

- Evaluation (using internal and external resources):
 - Permit and license review
 - Legal and regulatory actions
 - Reputation for compliance and social responsibility (including whether the customer is a member of the Electronic Industry Citizenship Coalition)
 - Financial practices and creditworthiness
 - Ownership and legal structure
 - Membership on any U.S. Government denied or restricted party list
- Obtaining compliance commitments
 - Our agreements contain compliance-related customer covenants.
- Addressing red flags:
 - Specific compliance - covenants
 - Improvement plans, including bidstating of internal controls if needed; and
 - Ultimately, deciding not to do business with the potential customer.

Objectives:

- Identify and resolve issues in advance
- Ensure agreements include all required protections should an issue arise

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Qualification and Risk Assessment – Distributors

We supplement our OEM practices with the following:

- Distributor evaluation:
 - Business climate in the territory;
 - A commitment to prevent gray marketing;
 - Recordkeeping practices; and
 - A commitment to proper usage of the Hitachi trademark.
- Obtaining compliance commitments
 - Distributor Code of Conduct; and
 - Audit rights.

Objectives:

- Identify and resolve issues in advance; and
- Ensure agreements include (a) verification methods and (b) all required protections should an issue arise.

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Qualification and Risk Assessment - Vendors

- Evaluation using internal and external resources:
 - Environmental and hazardous waste law compliance;
 - health and safety standards compliance;
 - Membership on any U.S. Government denied or restricted party list;
 - Any affiliation with the Company through family or other relationships; and
 - Legal and regulatory actions.
- Obtaining compliance commitments:
 - Supplier Code of Conduct;
 - Agreement covenants – for example "side agreements" with any vendors prohibited.
- Addressing red flags:
 - Improvement plans;
 - Conditioning bid acceptance on corrective actions;
 - Additional terms and conditions;
 - Frequent or accelerated performance reviews; or
 - Rejection of vendor's bid.

Objectives:

- Identify and resolve issues in advance;
- Ensure agreements include (a) verification methods and (b) all required protections in the event an issue arises

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Investigations

- Managed by the legal department, but involving, as necessary:
 - Internal audit, and;
 - Outside legal counsel and auditors.
- The initiation, status, and resolution of all investigations are reported to and discussed with the Audit Committee
- Purpose of investigations:
 - Legal exposure;
 - Commercial or reputational harm;
 - Specific remedy and, as necessary, structural or process changes.
- Possible outcomes:
 - Issuance of a letter reminding the partner of its legal obligations and contractual commitments;
 - Require specific remedial actions; or;
 - Termination of the relationship.

Objectives:

- Quickly evaluate issues and required resources;
- Clear communication of issues, process, and outcome; and
- Remediate and learn.

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Best Practices: Harmonic, Inc.

Diane Georgi, Vice President, Corporate Counsel

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Best Practice/Compliance

- Vendor Contract
 - Vendor Questionnaire (Credit App ++)
 - Contract should reflect actual product/services provided
 - Supplier Code of Conduct
 - "Standard" clauses; FCPA, reps & warranties, insurance, etc.
 - Signed by high level of Company signature authority

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Best Practice/Compliance (cont.)

- Level of support/involvement from senior management ("tone from the top")
- Review the company process/policy
- Ensure appropriate level of internal review
- Centralized control
- Benchmarks for agent fees/commissions

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Other strategies to mitigate risk

- Who picks the vendors?
- Employee training (sales, purchasing)
- Expense report controls
- Keep your finger on the pulse
- Do your homework but escalate if you smell smoke....

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Nuts and Bolts of Conducting Background Investigations

Wendy Schmidt, Principal
 Deloitte Financial Advisory Services LLP

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Information clients should consider about third parties

Business history, track record, and reputation	Red flag issues, such as involvement in corruption, bribery, fraud or organized crime	Track record in similar ventures or business relationships to that proposed	Political relationships and political support, and any use thereof	Hidden 'influencers' such as hidden shareholders or political figures
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Proven information gathering methods

Solutions	Consultation of public record information including: <ul style="list-style-type: none"> • National and international press databases • Corporate registry filings and credit rating agencies • Civil and criminal litigation records, where available • Searches conducted in relevant languages 	Information gathering through a network of outside sources: <ul style="list-style-type: none"> • Local and international business analysts with sector expertise • Others in wider investment and business sector • Political analysts, academics, journalists, and former diplomats • Those familiar with law enforcement and political spheres 	Domain knowledge and existing knowledge of sector-specific risks and issues: <ul style="list-style-type: none"> • Involvement in thousands of IDOs and investigations in numerous regions • Knowledge of risks affecting sectors and jurisdictions • Continued 'watch' over key jurisdictions
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Sources of Information

Personal or Identifying Information	Business Records	Litigation / Sanctions	Assets	Media
Personal identification reports	Business information reports	Civil/criminal litigation	Real property ownership records	Newspapers, magazines, specialty trade, and industry publications
Familial relationships/business associates	Credit reports	Bankruptcies	Watercraft/aircraft registration	Broadcast and wire transcripts
Phone number and address history	Secretary of State filings	Reported legal decisions	Motor vehicle registration	Internet resources
Verification of degrees and licenses	DBAs and registered trade names	Judgment filings	Stock ownership of 5% or greater in public entities	Cached Web sites
Biographies	Securities and Exchange Commission filings	Tax liens—federal/state	Business Records	Domain name owners
		Financial Industry Regulatory Authority	UCC filings	
		Disciplinary/regulatory sanctions, debarment	Thoroughbred horses/ fine art	

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	Data Source	Considerations
Level 1	<ul style="list-style-type: none"> • PEP/sanction list • Adverse media 	<ul style="list-style-type: none"> • Number of Vendors • Vendor activity • Vendor contact with government officials • Known or prior allegations • Jurisdictional risk (CPI score) • Availability of information in relevant jurisdictions • Industry risk • Country-specific common schemes • Project deadline
Level 2	<ul style="list-style-type: none"> • Includes Level 1 research • Identify Web site/media profile • Locate D&B profile • Corporate registry check • Identify shareholders and directors • Credit check • Bankruptcy/civil litigation • Criminal records (to the extent available) 	
Level 3	<ul style="list-style-type: none"> • Discreet source inquiries • Includes Level 1 and 2 research 	

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How Much Due Diligence is Enough?

Vendor Due Diligence and Government Investigations

Michael X. Marinelli, Shareholder
 Greenberg Traurig LLP

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It is the invariable habit of bureaucracies, at all times and everywhere, to assume that every citizen is a criminal.

H.L. Mencken

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The Conversation You Don't Want to Have with the Government

- Government: "Your channel partner bribed a foreign official to sell your products (or exported your product to Cuba)."
- General Counsel: "But we didn't know."
- Government: "Prove it."

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Civil and Criminal Liability Based on Actions of the Channel Partner

- Under the FCPA and export control regulations, company liability is based on knowledge
- Knowledge standard is the same
 - Positive information
 - Awareness of a high probability that the circumstance exists
 - Willful blindness
- Failure to conduct diligence and resolve red flags will establish knowledge

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Proving the Negative

- Company will need to show what it did know:
 - Show that the company took affirmative steps to obtain and assess information about the channel partner
 - That the process did yield any information that would indicate the likelihood of illegal behavior
- Fundamentals
 - Diligence conducted outside the sales organization
 - Documented at each stage

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How Much Is Enough?

- Varies with the risk factors and other circumstances
- Factors
 - Company resources
 - Geographic markets
 - Products sold
 - Markets served
 - Length of sales cycle
 - Nature of sales process
 - Degree of partner involvement in the sales process

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Look before you leap
Managing risk in global
investments

A Message from Wendy Schmidt and Joe Zier

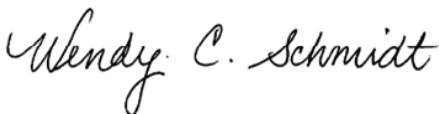
We are pleased to present the annual Look Before You Leap survey on how companies are using background/integrity checks to better manage the risks inherent in investments and new business relationships outside the United States. In addition, this year's survey also addressed how companies are complying with the U.S. Foreign Corrupt Practices Act (FCPA) and the challenges they face.

This year's survey shows us that companies appear to be increasingly focused on assessing and managing the risk in their international relationships, but many seem to be struggling to do so at a reasonable cost. To gain greater insight into whom they are doing business with, background checks are progressively becoming the norm — conducted at least some of the time by 89 percent of the survey participants — and will be viewed as expected baseline controls by the regulators in the next year.

Survey results also highlighted that companies that conduct background investigations, and do so effectively, may be able to avoid significant problems that may otherwise have gone undetected in the due diligence process. In fact, more than half of the survey respondents said their companies had renegotiated or cancelled a planned investment or business relationship outside the United States based on the findings of a background investigation.

The increased focus by management on these issues appears to have been spurred by a more aggressive regulatory environment. In this year's survey, three-quarters of the survey participants said they had become more concerned about the potential for FCPA violations, with the greatest concern about their activities in emerging markets such as Russia, Africa, China, and the Middle East. The potential for significant regulatory risk, the need to install robust internal controls and conduct additional, effective due diligence were some of the key issues identified as a result of Deloitte's¹ recent investigative work for Siemens AG, which agreed in 2008 to pay fines totaling \$1.6 billion to U.S. and German regulatory authorities due to anti-corruption violations.

In our practice each day, we see that companies with robust due diligence and strong internal controls are usually less likely to encounter unforeseen problems in their overseas business activities. We hope that this 2009 Look Before You Leap survey will help your company as it manages these complex issues.



Wendy Schmidt
National Leader, Business Intelligence Services
Deloitte Financial Advisory Services LLP



Joe Zier
Partner, Forensic & Dispute Services
Deloitte Financial Advisory Services LLP

¹As used in this instance, Deloitte refers to Deloitte & Touche GmbH and the 35 member firms of Deloitte Touche Tohmatsu that participated in the Siemens AG investigation.

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Executive summary

This third edition of Deloitte's² *Look Before You Leap* survey focused on the use of background/integrity checks when considering a business relationship, investment, or acquisition outside the United States.³ In addition, it analyzed in detail the steps companies are taking when active in foreign markets to help comply with the U.S. Foreign Corrupt Practices Act (FCPA).

The survey found that investigating these issues has had a major impact on many company business plans. More than half of the 200 survey participants surveyed said that issues identified in background/integrity checks over the last three years had led their companies to renegotiate or cancel a planned business relationship, investment, or acquisition outside the United States. Similarly, 42 percent of the survey participants said their companies had cancelled or renegotiated a planned business transaction outside the United States over the last three years due to concerns over compliance with the FCPA.

And concerns over compliance with the FCPA appear to be increasing. Seventy-five percent of the survey participants surveyed said that over the last three years companies in their industry had become more concerned over the potential for FCPA violations, with the greatest concern about potential violations in emerging markets such as Russia, China, and the Middle East.

Despite the high level of concern about maintaining FCPA compliance, however, only about one-fifth or fewer survey participants said their companies conduct detailed investigations into a series of potential FCPA problem areas — such as whether certain compensation to third parties is appropriate or whether the target company has a system to identify anomalous transactions — before entering into a business relationship outside the United States.

In working with clients in many industries, Deloitte has found that companies can benefit from proactive programs that probe deeply into the backgrounds and past activities of potential partners to identify any allegations of bribery, corruption, criminal activity, or other inappropriate behavior. When conducting such due diligence, companies should consider looking at a variety of sources, including public records, local media, Internet searches, and interviews with people knowledgeable about the local market. Companies should also consider evaluating the effectiveness of any anti-corruption compliance programs in the local companies that they are seeking to acquire or do business with.

Companies that fail to take these steps may run the risk of violating the FCPA and other laws, and could potentially be subject to significant penalties. In addition, the discovery of inappropriate or illegal behavior on the part of foreign business partners can lead a company to suffer significant damage to its corporate reputation. As U.S. companies continue to expand around the world, especially in emerging markets, putting in place effective procedures designed to help identify and address potential problems with business partners and acquisition targets — both with FCPA compliance and with business integrity generally — can be a key contributor to long-term success.

² As used here and throughout the remainder of this document, Deloitte means Deloitte Financial Advisory Services LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

³ The first edition of the survey was *Look Before You Leap: Emerging market investments... how do you manage the risks?*, Deloitte Financial Advisory Services LLP, 2006. The second edition of the survey was *Look Before You Leap: Investigative Due Diligence in International Business Relationships*. Deloitte Financial Advisory Services LLP, 2007. In this document, "Deloitte" means Deloitte Financial Advisory Services LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.

Survey methodology

Deloitte Financial Advisory Services LLP contracted Bayer Consulting to conduct this Look Before You Leap survey to help assess how companies are managing investigative due diligence in acquisitions, investments, and business relationships outside the United States.

The survey was conducted online between May 28 and October 3, 2008. It was completed by 216 senior

professionals involved with acquisitions, investments, and business relationships outside the United States for their companies. The responses were aggregated for the purpose of analysis, and individual responses have been kept strictly confidential. The survey participants came from companies representing a range of industries and sizes. (See Exhibit 1 and Exhibit 2.)

Exhibit 1
Industry

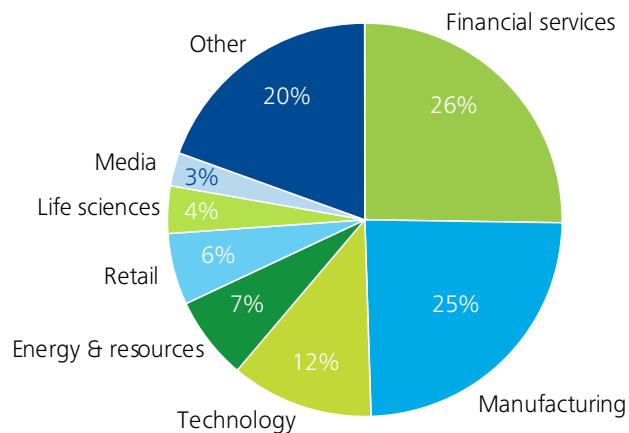
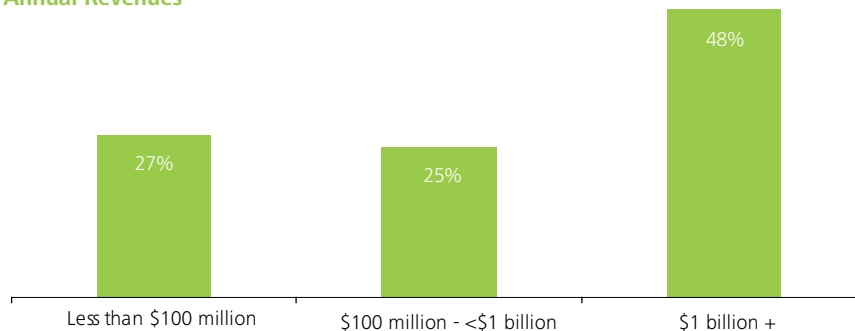


Exhibit 2
Annual Revenues



Background/Integrity investigations

More than half of the survey participants said their companies had cancelled or renegotiated planned transactions outside the United States due to issues identified in background/integrity investigations.

There was widespread use of background/integrity investigations before business transactions outside the United States by the companies participating in the survey. Fully 89 percent of the survey participants said their companies conducted background/integrity checks of relevant parties at least some of the time before entering into a business relationship, merger, or acquisition outside the United States, while 69 percent said they always or frequently conducted such investigations.

For many of the participants, these investigations have been a critical input into business decisions. Fifty-nine percent of the survey participants said that information identified in a background/integrity check had led their

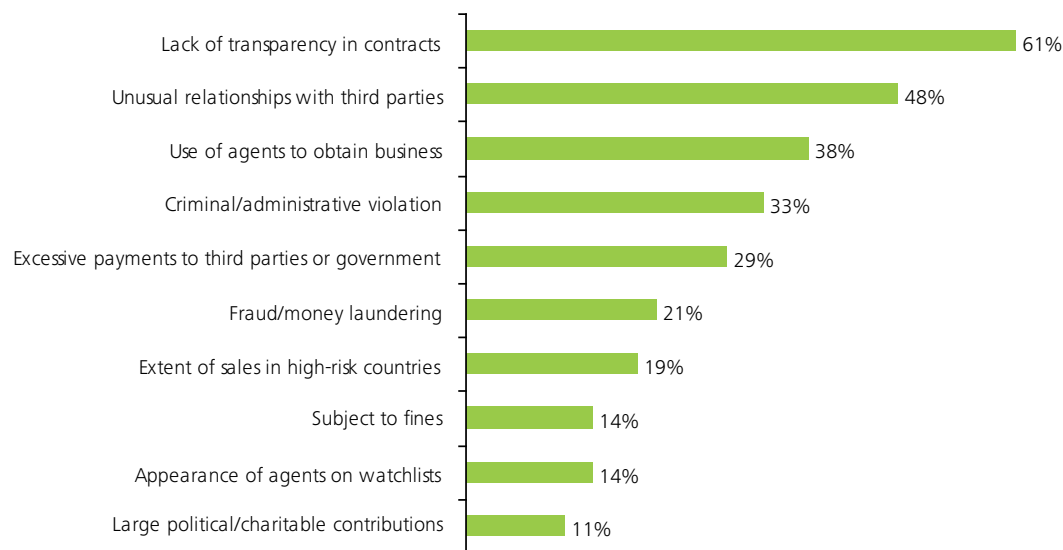
companies to renegotiate a planned transaction outside the United States over the last three years, while 55 percent said such information had led them to cancel one.

The most common issues that led companies to change their foreign business plans were a lack of transparency or unusual payment structures in contracts, cited as a reason by 61 percent of survey participants, and the existence of unusual business relationships between executives at the target company and government officials or third parties, cited by 48 percent of survey participants. (See Exhibit 3.) However, several other issues also caused companies to cancel or renegotiate transactions, including the use of agents, consultants, distributors, or other third parties to obtain or facilitate business (38 percent of participants) and the discovery that the entity was involved in a criminal or administrative violation from a governmental agency (33 percent of participants).

Exhibit 3

Issues identified in background/integrity investigations that led company to cancel or renegotiate potential transactions outside the United States

Base = Survey participants at companies that cancelled or renegotiated

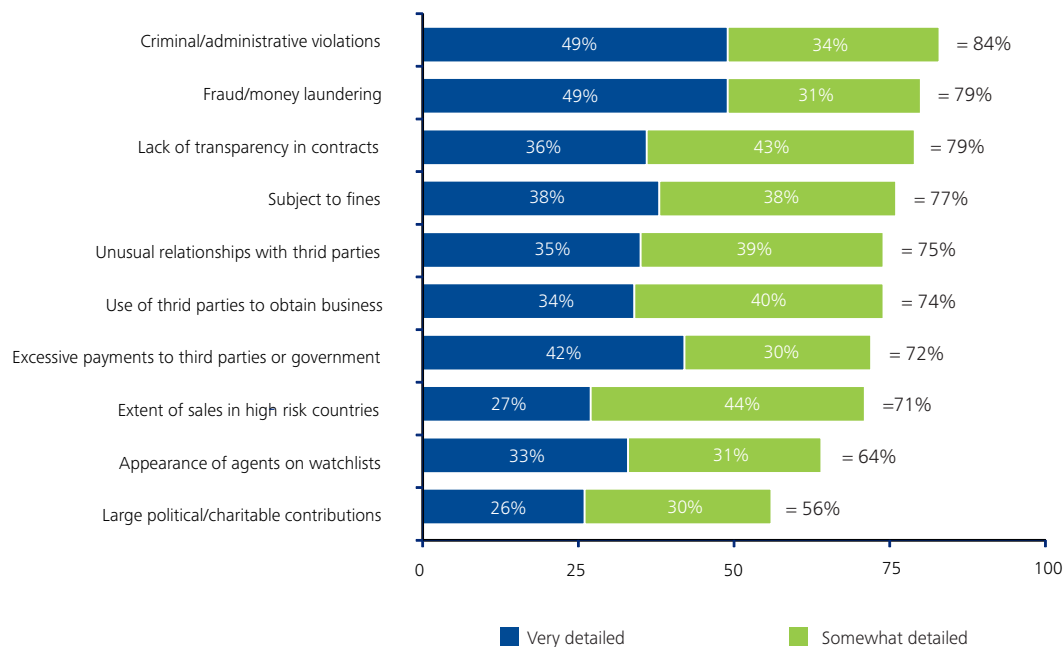


Background/integrity checks investigate a wide range of potential problems.

Survey participants were asked about the extent to which their background/integrity checks investigated a list of potential problem areas. (See Exhibit 4.) More than 70 percent of the survey participants said that eight of the 10 issues received either a very detailed or somewhat detailed investigations at their companies. The issues

that most often received a very detailed investigation during background/integrity checks were the existence of criminal or administrative violations (49 percent of participants), evidence of fraud or money laundering schemes (49 percent of participants), and excessive or questionable payments to or on behalf of government officials, consultants, or other third parties (42 percent of participants).

Exhibit 4
Level of investigation into issues in background/integrity investigations



Compliance with the Foreign Corrupt Practices Act

One of the key concerns when entering into a business relationship, making an investment, or conducting an acquisition outside the United States is compliance with the Foreign Corrupt Practices Act (FCPA), which prohibits U.S. companies and their subsidiaries, as well as their officers, directors, employees, and agents, from bribing “foreign officials” in order to secure business or some other improper advantage. It also requires all SEC-registered companies to maintain internal accounting controls and to keep books and records that accurately reflect all transactions. In addition to requiring appropriate record-keeping for all transactions and dispositions of assets, the FCPA also stipulates the required levels of due diligence about individuals and entities doing business with the company.

Concerns over FCPA compliance

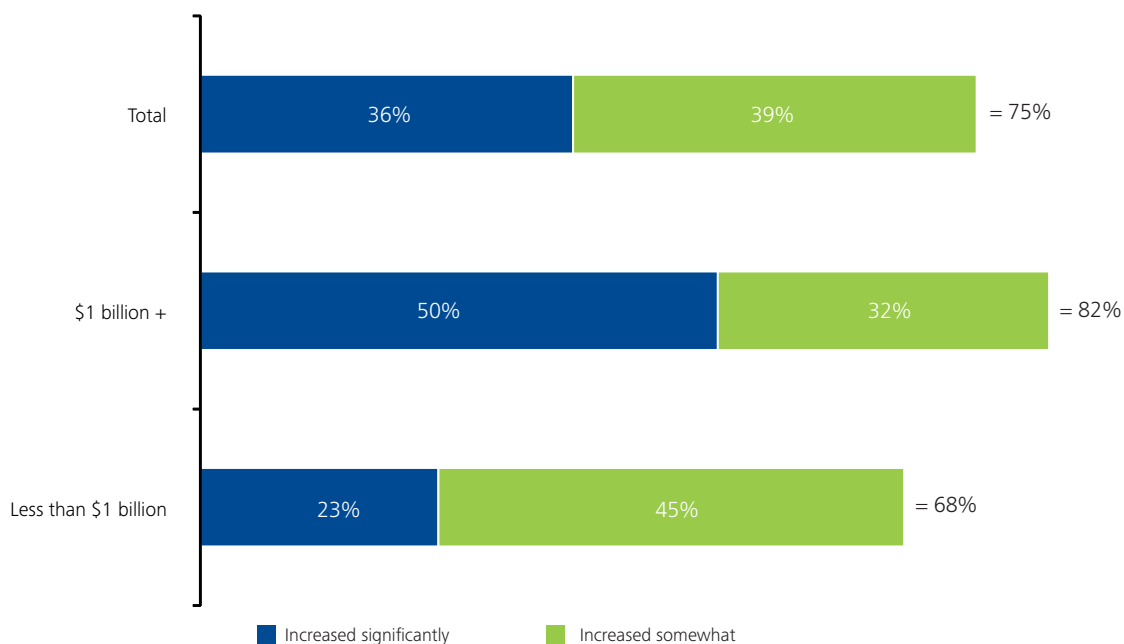
Companies are increasingly concerned over the potential for FCPA violations.

Three-quarters of the survey participants surveyed said that companies in their industry had become more concerned over the last three years about the potential for FCPA violations, with roughly one-third saying that these concerns had increased significantly. (See Exhibit 5.) The concerns about FCPA compliance are even greater among larger companies. Fully half of the survey participants at companies with annual revenues of \$1 billion or more believed that the concern in their industry about potential FCPA violations had increased significantly, while 82 percent said that it had increased at least somewhat.

Exhibit 5

Increased concern over last three years about potential FCPA violations

Views of respondents about concern among companies in their industry overall



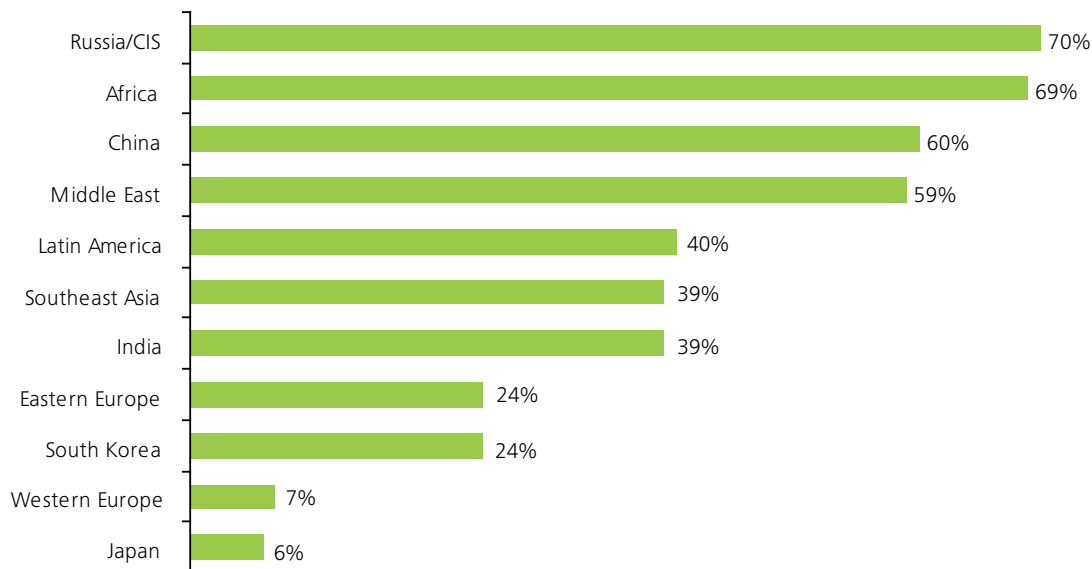
Greatest concern about FCPA compliance is related to emerging markets.

With many emerging markets having become associated with corrupt business practices, survey participants are most concerned about the potential for violations of the FCPA when doing business in these locations. When asked how concerned their companies were about the potential for FCPA violations when doing business in specific markets, survey participants were most likely to report their companies were extremely concerned about FCPA violations in Russia/CIS (i.e., the former members of the Soviet Union) (70 percent), Africa (69 percent), China (60 percent), and the Middle East (59 percent). (See Exhibit 6.) Substantial percentages of survey participants also

reported concerns about Latin America, Southeast Asia, and India.

Bribery schemes are one of the sources of FCPA risk. When asked about the types of bribery schemes observed most often in foreign business environments, the schemes that were most often ranked as either first or second in frequency were subcontractors that don't add value (48 percent), inappropriate training and travel expenses (46 percent), and the use of third-party foreign payers (45 percent). Roughly one-quarter of survey participants cited intermediary price inflation and the creation of slush funds.

Exhibit 6
Concern about potential for FCPA violations in specific locations percent
Percent extremely concerned



FCPA concerns often lead companies to renegotiate or cancel planned foreign transactions.

Forty-two percent of survey participants reported that concerns over FCPA compliance had led their companies to either renegotiate or pull out of a planned business relationship, merger, or acquisition outside the United States over the last three years.

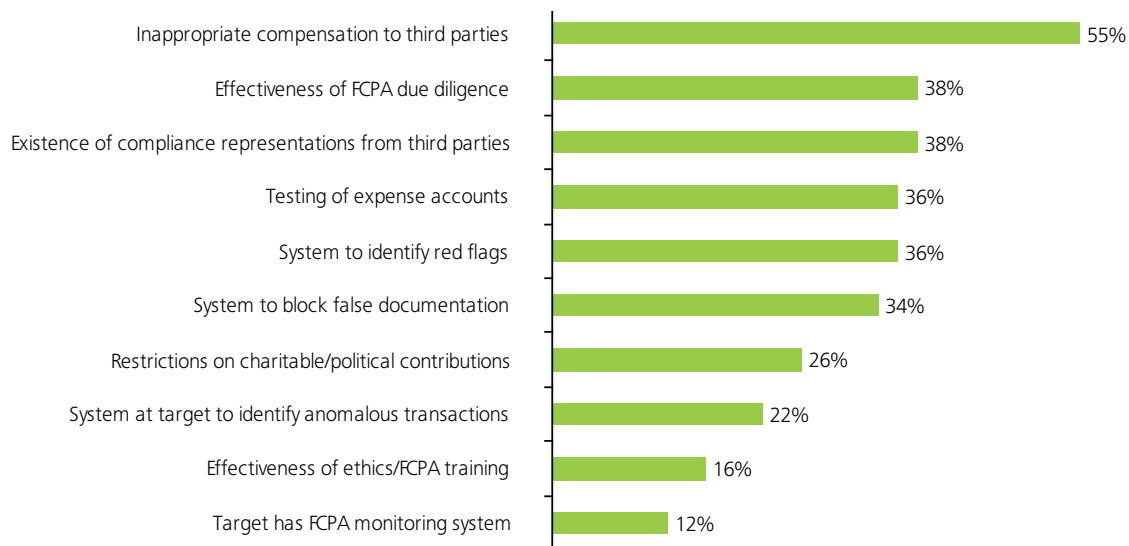
Survey participants cited a long list of FCPA concerns that had contributed to these decisions. Leading the list of FCPA concerns that led to changed business plans was the

appropriateness of compensation paid to international agents, consultants, and third parties, which was cited by 55 percent of survey participants. (See Exhibit 7.) However, several other issues were named by roughly one-third of survey participants as motivating their areas of concern that led to their decision, including the existence and effectiveness of FCPA due diligence/screening procedures and the existence of compliance representations from employers, agents, and other business partners.

Exhibit 7

FCPA concerns that led company to renegotiate or cancel planned transaction outside the United States

Base=Survey participants at companies that have cancelled or renegotiated transactions over last three years due to FCPA concerns



Note: Percentages total to more than 100 percent since survey participants could make multiple selections.

FCPA compliance programs

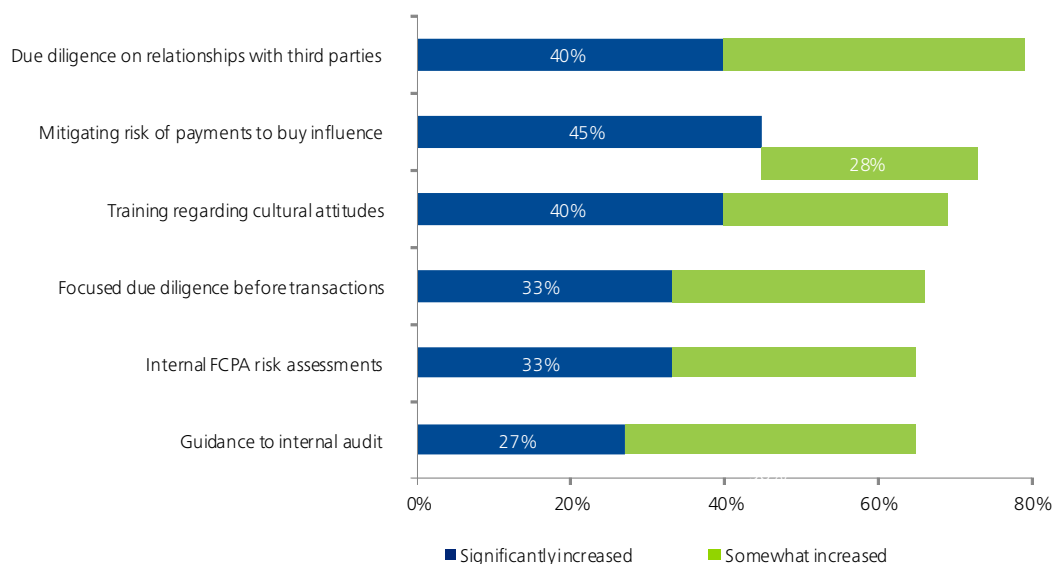
Companies have increased their FCPA compliance activities.

As a result of these concerns, companies appear to have increased their activity in several areas to help maintain FCPA compliance. (See Exhibit 8.) Among the areas of

increased focus are due diligence on a target entity's relationships with agents, consultants, and third-party vendors and service providers, and internal controls focused on mitigating the risk of payments to third parties to obtain or retain governmental business.

Exhibit 8

Increase in activity over last three years to ensure FCPA compliance



Companies employ a wide range of FCPA compliance techniques.

Survey participants reported that their companies use a wide range of techniques to help maintain FCPA compliance. (See Exhibit 9.) Leading the list was having clearly articulated corporate policies and procedures against violations of FCPA and anti-bribery laws, cited by almost three-quarters of survey participants. Other methods used by many companies were appropriate financial and accounting procedures designed to establish an effective system of internal controls; having one or more corporate officials with responsibility for overseeing FCPA compliance; and a formal reporting system, such as a "help line" to report suspected violations.

Larger companies appeared to be much more likely to use such methods. For example, 73 percent of survey participants at companies with \$1 billion or more in annual

revenues said they had a formal reporting system for FCPA and 63 percent said they had appropriate disciplinary procedures to address violations or suspected violations, compared to 37 percent and 33 percent, respectively, among those at smaller companies.

Surprisingly, only about one-quarter of survey participants said their companies required annual certifications of compliance by third parties, and a similar percentage said they conducted independent audits by outside counsel and auditors at least every three years to help them in their assessment of the effectiveness of the company's compliance code, including its anti-corruption provisions.

Instead of conducting independent audits by outside counsel and auditors, 60 percent of survey participants said their companies conducted internal audits by company employees focused on the effectiveness of FCPA risk

mitigation processes and controls. Other approaches used to test the effectiveness of FCPA controls were having outside counsel interview employees and third parties (29 percent of participants), and conducting surveys and testing of third parties on their FCPA knowledge and compliance (17 percent of participants). However, one-quarter of survey participants said their companies did not test the effectiveness of their FCPA controls, including 16 percent of survey participants at companies with \$1 billion or more in revenues.

Further, there appears to be limited use of software to test for anomalies or red flags with respect to FCPA risk mitigation and controls. Only 30 percent of survey participants reported using such data analytic programs to identify potential FCPA problems, with just 4 percent saying they used them extensively.

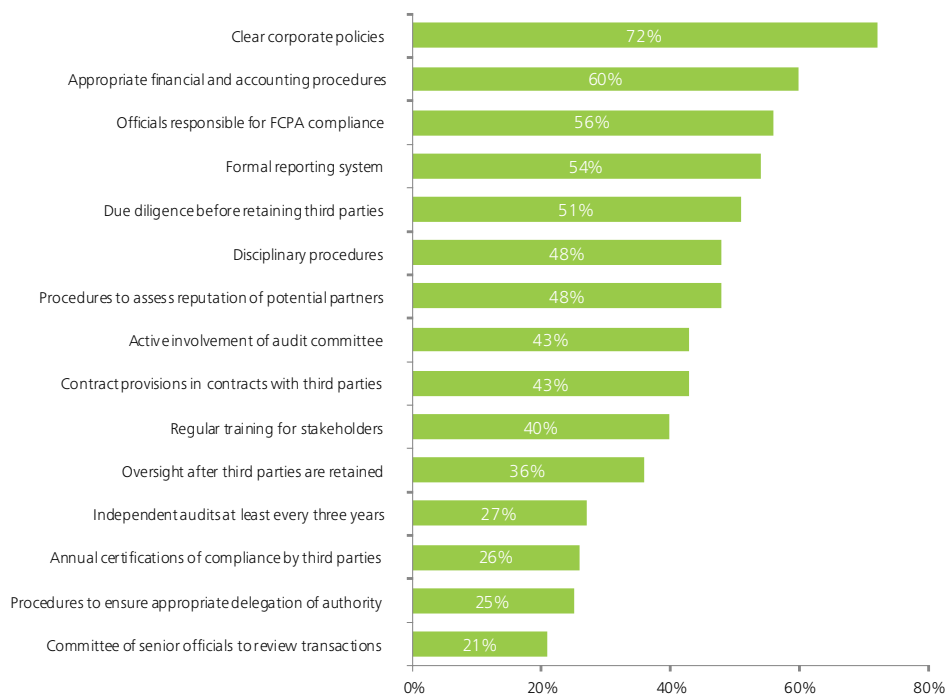
Most companies provide training to employees on FCPA issues.

A key element in any FCPA compliance program is training employees on the issues involved and how to handle them. Sixty-three percent of survey participants said their companies provided FCPA training to its employees annually or more frequently, with 87 percent of survey participants at companies with \$1 billion or more in annual revenues reporting that training is provided this often.

Many functions receive FCPA training. Roughly 80 percent or more of survey participants said their companies provided FCPA training to its senior corporate management (89 percent of participants), senior business unit management (89 percent of participants), legal department (87 percent of participants), sales and marketing employees (85 percent of participants), finance (84 percent of participants), and operations (78 percent of participants).

Exhibit 9

Activities to ensure FCPA compliance



FCPA investigations

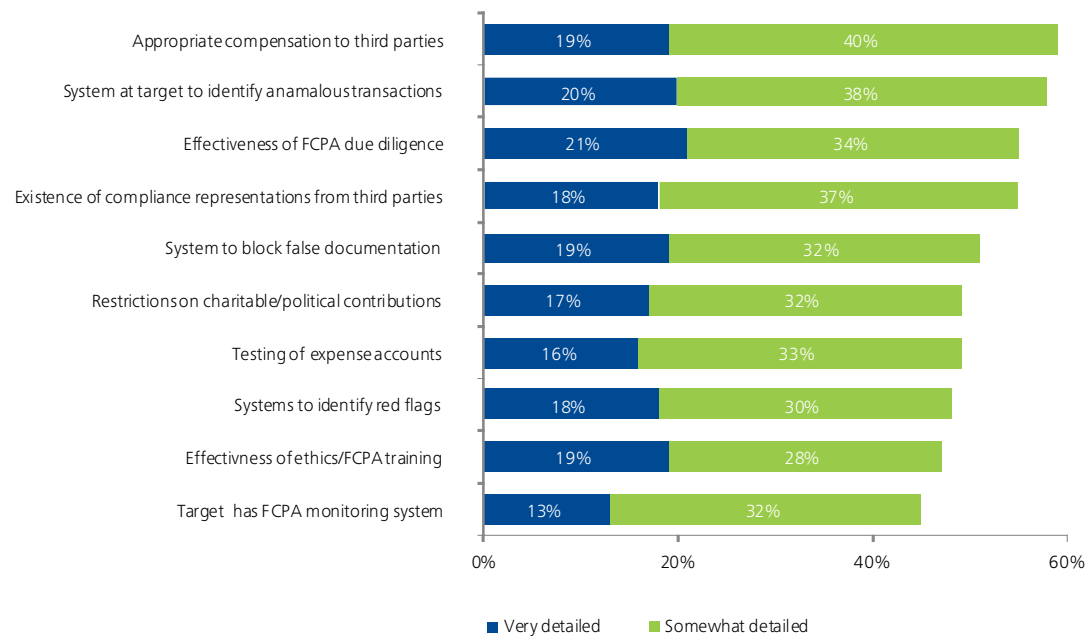
Few companies conduct detailed investigations of potential FCPA problem areas.

Surprisingly few companies conduct detailed investigations of potential problem areas. (See Exhibit 10.) Only roughly one fifth or fewer of the survey participants said their companies conducted a very detailed investigation of

potential problems areas before making an investment or acquisition, or entering into a business relationship outside the United States. Further, only about one half of the survey participants said their companies conducted at least a somewhat detailed investigation of potential problem areas.

Exhibit 10

Level of detail of FCPA investigation before entering into business relationship or acquisition outside the United States



Procurement fraud and corruption Sourcing from Asia

With the number of companies using suppliers based in Asia growing, instances of fraud and corruption in the procurement cycle are increasing. While cost savings can be attractive, the financial risks can be bigger and a company's reputation and brands may be put at stake. What companies may not realize is managing procurement fraud and corruption risks in Asia may require a distinctly different approach

With more countries stepping up enforcement of local anticorruption laws and U.S. enforcement of the Foreign Corrupt Practices Act leading to record fines and penalties, the risk of significant financial and reputational damage from procurement fraud and corruption may now be greater than ever.

Illicit rebates, kickbacks and dubious vendor relationships are all too common. While these risks can never be fully eliminated, organizations can implement controls to mitigate the likelihood of such risks occurring and to help detect them if earlier if they do occur.

China calling

Specific procurement fraud and corruption risks in China include instances where business professionals new to the country are exposed to longer procurement chains, a different economic climate, unfamiliar trade practices, language and cultural barriers, among others. This is further complicated by the effects of China's one-child policy, where many people have no siblings, but instead create an intricate network of friends and alumni. This can make conflicts of interest harder to identify. Business success in China is often due to contacts ("guanxi"), but what may be regarded as an acceptable business practice in Asia, could be illegal elsewhere.

In this article, we highlight an approach organizations can take to help mitigate these risks.

The procurement fraud challenge

Instances of fraud and corruption in the procurement cycle are typically difficult to detect, prove or prosecute. They are often dealt with internally and implicated employees allowed to "resign" with their reputations intact, increasing the likelihood of there being unprosecuted fraudsters among a company's experienced hires.

A high-risk fraud environment is typified by heightened pressure, opportunity and rationalization – the three sides of the "fraud triangle." These factors could be exacerbated by an economic downturn, leading to damage that may only be revealed sometimes years later, after economic recovery is under way.

Employees put in a position where they are requested to pay or are offered a bribe, and who have not already rejected both scenarios, will often ask themselves three questions:

- Will I get caught?
- Is it more than my job is worth?
- Is it right or wrong?

They may rationalize paying a relatively modest bribe on a big contract as not a significant risk. And if they do decide to pay a bribe, they will use the company's money. This typically means two things: first, there will likely be an incidence of fraud in order to create or hide the payments; and second, they may need to get others involved to help circumvent internal controls.

From procurement to distribution, employees and external parties, such as suppliers, distributors and competitors, all have opportunities to commit procurement fraud. This can range from false invoicing, bribery and kickback schemes to inventory theft and substandard goods.

Some red flags to look for include:

- Poor or non-existent record keeping
- Higher price/lower quality goods
- Excessive entertaining of procurement staff by suppliers
- Deviations in communications between procurement staff and suppliers, such as calls or text messaging to mobile phones
- Procurement staff demanding extended periods of notice before they allow an audit to take place

- Inexperienced buyers dealing with overbearing suppliers — especially when conducting business in Asia

While the risk of fraud cannot normally be eliminated entirely, it can be greatly reduced with a combination of company-level anti-fraud controls and risk-specific anti-fraud controls.

Knowing your supplier

Performing background checks and integrity due diligence can help determine whether your suppliers are of reputable standing as well as highlighting the manufacturer's interests, associations, related parties and possible conflicts of interest.

Given recent events in China, where factory managers as well as government officials have been investigated over a number of industrial pollution incidents, which in one case resulted in the lead poisoning of over 1,000 children in the summer of 2009, organizations should consider assessing their manufacturers' adherence to laws and regulations, whether environmental or employee related.

Checking on the financial stability of suppliers is also important. Ideally, this should include an analysis of the supplier's financial records to help determine whether it is in a stable financial position and is able to fulfil its contractual commitments. Reports of suppliers taking orders and deposits from foreign buyers and then not fulfilling the contract are not uncommon.

Additionally, analyzing both payroll costs and employee numbers may highlight problems of underpayments, overstaffing, illegal overtime or child labor.

Once selected, a supplier can be subjected to regular due diligence checks to help assess whether it is complying with its legal and regulatory requirements.

In the Deloitte Touche Tohmatsu Global Manufacturing Industry Group's *Innovation in Emerging Markets 2008 Annual Study*, it was found that only 35 percent of developed market manufacturers conducted "extensive monitoring" of their suppliers' subcontractors, while 49 percent performed "some monitoring" and 16 percent only performed "little monitoring."

Subcontractor risks

As procurement chains extend and margins are squeezed, suppliers are often driven to more and more subcontracting. So determining that a supplier has the required capacity can be crucial. In many instances in China, subcontractors and even subcontractors of subcontractors are used without the buyer's knowledge.

China's manufacturing scandals over the past few years demonstrate the risks can be enormous unless an organization has visibility and control over the process. Branded products may be made in substandard facilities causing reputational harm to the buyer. Substandard or hazardous materials might be introduced during the production process, creating significant product liability exposure.

Procurement quality fraud: Buyer beware!

1. Economic losses from Chinese drywall could reach \$25 billion
2. Company launches biggest recall in its history — recalls 19 million toys made in China
3. Almost 300,000 babies taken ill with contaminated milk powder made in China

In addition to the externally focused activities described above, internal anti-fraud controls are also important in Asian procurement activities, but they may require customization to deal with regional or country-specific cultural and business practice issues.

Establishing the right culture

While paying bribes may be part of the business culture in some parts of Asia, an organization that condones bribes runs a high risk of finding itself in the regulatory or investor spotlight.

Setting the right ethical tone within the organization is therefore vital. As is communicating this tone to business partners. Region- or country-specific codes of conduct and ethics policies can help to address specific local risks and business practices. They should be practical, easy to understand and easily accessible in suitable local languages for every employee.

The proactive development and promulgation of these policies by senior management can help set the tone for what is deemed fraudulent or unethical behavior, thereby facilitating the disciplinary process.

Hiring the right people

Automated procurement and accounting systems produce information, but these processes are still driven by people. This is particularly the case in China where most data input is still done manually, providing an ideal environment for fraud.

Background checks on individuals with procurement responsibilities can be conducted before hiring and periodically thereafter. The scope of such checks can be tailored based on the potential risks to the company. The approach used for background checks can also be adjusted from country to country, depending on where the relevant information is more likely to be found.

In order to limit the amount of control each individual has over each business process, segregation of duties can be implemented so that no single individual is empowered to manage the whole transaction.

Assessing internal controls

To mitigate the risk of fraud, existing controls, thresholds and procedures can be assessed skeptically. All too often foreign managers are simply told "this is the way it's done in this part of the world." They may then leave it at that, until it goes wrong.

To identify fraud one must understand risk. By identifying the risks within a control system, areas susceptible to fraud can be highlighted and corrected.

A good question to consider is, "If someone in the procurement cycle wanted to commit fraud or bribery, would this control be likely to prevent it or promptly detect it and bring it to the attention of someone not involved in the fraud who would be likely to stop it?"

Fraud in the procurement process commonly occurs when controls are deliberately overridden, by either the individual who knows he or she will not be challenged (perhaps for cultural reasons), or a collusive group able to use its knowledge to hide fraudulent activity. So anti-fraud controls

"Sourcing product in China represents a significant opportunity, but its risks are often not properly assessed and can prove costly to manage."

Nick Robinson
Partner, Deloitte China

desirably have multiple layers and include controls that are more resilient to attempted override.

Actively monitoring controls

Assessing and enhancing internal controls can make them strong at one point in time. You do not want someone to be able to change or dismantle those controls once your back is turned. Actively monitoring those controls and testing them regularly can help to keep them strong over an extended period.

Preparing a fraud response plan

The timing of a fraud cannot be predicted. It can arise at the most inconvenient times. Having a fraud response plan in place can help the organization to respond without delay. This is a key issue in today's world for two main reasons. First, vital electronic evidence may be overwritten or discarded if it is not promptly captured forensically. Second, the media may be pressing senior executives for answers to allegations that may only just have surfaced on the other side of the world, yet are circulating widely on the Internet.

Conclusion

Asia's trading environment provides many business opportunities, but also many risks.

The amounts paid to resolve claims resulting from procurement fraud and corruption can be high, but they are more likely secondary to the loss of reputation and damage to brands companies may suffer for being associated with such claims. In this context, fraud and corruption prevention activities may be the best investment of all.

Version 3.0 (2009)**ELECTRONIC INDUSTRY CODE OF CONDUCT**

The Electronic Industry Code of Conduct establishes standards to ensure that working conditions in the electronics industry supply chain are safe, that workers are treated with respect and dignity, and that business operations are environmentally responsible.

Considered as part of the electronics industry for purposes of this Code are Original Equipment Manufacturers (OEMs), Electronic Manufacturing Services (EMS) firms and Original Design Manufacturers (ODMs) including contracted labor that may design, market, manufacture and/or provide goods and services that are used to produce electronic goods. The Code may be voluntarily adopted by any business in the electronics sector and subsequently applied by that business to its supply chain and subcontractors.

To adopt the Code and become a participant ("Participant"), a business shall declare its support for the Code and actively pursue conformance to the Code and its standards in accordance with a management system as set forth in the Code.

For the Code to be successful, Participants must regard the code as a total supply chain initiative. At a minimum, participants shall also require its next tier suppliers to acknowledge and implement the Code.

Fundamental to adopting the Code is the understanding that a business, in all of its activities, must operate in full compliance with the laws, rules and regulations of the countries in which it operates.¹ The Code encourages Participants to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility.

The Electronic Industry Citizenship Coalition is committed to obtaining regular input from stakeholders in the continued development and implementation of the Electronic Industry Code of Conduct (EICC).

The Code is made up of five sections. Sections A, B, and C outline standards for Labor, Health and Safety, and the Environment, respectively. Section D outlines the elements of an acceptable system to manage conformity to this Code. Section E adds standards relating to business ethics.

¹ The Code is not intended to create new and additional third party rights, including for workers.

A. LABOR

Participants are committed to uphold the human rights of workers, and to treat them with dignity and respect as understood by the international community.

The recognized standards, as set out in the annex, were used as references in preparing the Code and may be a useful source of additional information.

The labor standards are:

- 1) **Freely Chosen Employment**
Forced, bonded or indentured labor or involuntary prison labor shall not be used. All work will be voluntary, and workers shall be free to leave upon reasonable notice. Workers shall not be required to hand over government-issued identification, passports or work permits to the Participant or Labor Agent as a condition of employment.
- 2) **Child Labor Avoidance**
Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15 (or 14 where the law of the country permits), or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. The use of legitimate workplace apprenticeship programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize the health or safety of young workers.
- 3) **Working Hours**
Studies of business practices clearly link worker strain to reduced productivity, increased turnover and increased injury and illness. Workweeks are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. Workers shall be allowed at least one day off per seven-day week.
- 4) **Wages and Benefits**
Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. The basis on which workers are being paid is to be provided in a timely manner via pay stub or similar documentation.
- 5) **Humane Treatment**
The Participant's disciplinary policies and procedures shall be clearly defined and communicated to workers. There is to be no harsh and inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers: nor is there to be the threat of any such treatment.

A. LABOR (con't.)

6) Non-Discrimination

Participants should be committed to a workforce free of harassment and unlawful discrimination. Companies shall not engage in discrimination based on race, color, age, gender, sexual orientation, ethnicity, disability, pregnancy, religion, political affiliation, union membership or marital status in hiring and employment practices such as promotions, rewards, and access to training. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way.

7) Freedom of Association

Open communication and direct engagement between workers and management are the most effective ways to resolve workplace and compensation issues. Participants are to respect the rights of workers to associate freely, join or not join labor unions, seek representation, join workers' councils in accordance with local laws. Workers shall be able to communicate openly with management regarding working conditions without fear of reprisal, intimidation or harassment.

B. HEALTH and SAFETY

Participants recognize that in addition to minimizing the incidence of work-related injury and illness, a safe and healthy work environment enhances the quality of products and services, consistency of production and worker retention and morale. Participants also recognize that ongoing worker input and education is essential to identifying and solving health and safety issues in the workplace. Recognized management systems such as OHSAS 18001 and ILO Guidelines on Occupational Safety and Health were used as references in preparing the Code and may be a useful source of additional information.

The health and safety standards are:

- 1) **Occupational Safety**
Worker exposure to potential safety hazards (e.g., electrical and other energy sources, fire, vehicles, and fall hazards) are to be controlled through proper design, engineering and administrative controls, preventative maintenance and safe work procedures (including lockout/tagout), and ongoing safety training. Where hazards cannot be adequately controlled by these means, workers are to be provided with appropriate, well-maintained, personal protective equipment. Workers shall not be disciplined for raising safety concerns.
- 2) **Emergency Preparedness**
Emergency situations and events are to be identified and assessed, and their impact minimized by implementing emergency plans and response procedures, including: emergency reporting, employee notification and evacuation procedures, worker training and drills, appropriate fire detection and suppression equipment, adequate exit facilities and recovery plans.
- 3) **Occupational Injury and Illness**
Procedures and systems are to be in place to prevent, manage, track and report occupational injury and illness, including provisions to: a) encourage worker reporting; b) classify and record injury and illness cases; c) provide necessary medical treatment; d) investigate cases and implement corrective actions to eliminate their causes; and e) facilitate return of workers to work.
- 4) **Industrial Hygiene**
Worker exposure to chemical, biological and physical agents is to be identified, evaluated, and controlled. Engineering or administrative controls must be used to control overexposures. When hazards cannot be adequately controlled by such means, worker health is to be protected by appropriate personal protective equipment programs.
- 5) **Physically Demanding Work**
Worker exposure to the hazards of physically demanding tasks, including manual material handling and heavy or repetitive lifting, prolonged standing and highly repetitive or forceful assembly tasks is to be identified, evaluated and controlled.
- 6) **Machine Safeguarding**
Production and other machinery is to be evaluated for safety hazards. Physical guards, interlocks and barriers are to be provided and properly maintained where machinery presents an injury hazard to workers.

B. HEALTH and SAFETY (con't.)

7) Sanitation, Food, and Housing

Workers are to be provided with ready access to clean toilet facilities, potable water and sanitary food preparation, storage, and eating facilities. Worker dormitories provided by the Participant or a labor agent are to be maintained clean and safe, and provided with appropriate emergency egress, hot water for bathing and showering, and adequate heat and ventilation and reasonable personal space along with reasonable entry and exit privileges.

C. ENVIRONMENTAL

Participants recognize that environmental responsibility is integral to producing world class products. In manufacturing operations, adverse effects on the community, environment and natural resources are to be minimized while safeguarding the health and safety of the public. Recognized management systems such as ISO 14001, the Eco Management and Audit System (EMAS) were used as references in preparing the Code and may be a useful source of additional information.

The environmental standards are:

- 1) **Environmental Permits and Reporting**
All required environmental permits (e.g. discharge monitoring), approvals and registrations are to be obtained, maintained and kept current and their operational and reporting requirements are to be followed.
- 2) **Pollution Prevention and Resource Reduction**
Waste of all types, including water and energy, are to be reduced or eliminated at the source or by practices such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials.
- 3) **Hazardous Substances**
Chemical and other materials posing a hazard if released to the environment are to be identified and managed to ensure their safe handling, movement, storage, use, recycling or reuse and disposal.
- 4) **Wastewater and Solid Waste**
Wastewater and solid waste generated from operations, industrial processes and sanitation facilities are to be characterized, monitored, controlled and treated as required prior to discharge or disposal.
- 5) **Air Emissions**
Air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations are to be characterized, monitored, controlled and treated as required prior to discharge.
- 6) **Product Content Restrictions**
Participants are to adhere to all applicable laws, regulations and customer requirements regarding prohibition or restriction of specific substances, including labeling for recycling and disposal.

D. MANAGEMENT SYSTEM

Participants shall adopt or establish a management system whose scope is related to the content of this Code. The management system shall be designed to ensure (a) compliance with applicable laws, regulations and customer requirements related to the participant's operations and products; (b) conformance with this Code; and (c) identification and mitigation of operational risks related to this Code. It should also facilitate continual improvement.

The management system should contain the following elements:

- 1) **Company Commitment**
Corporate social and environmental responsibility policy statements affirming Participant's commitment to compliance and continual improvement, endorsed by executive management.
- 2) **Management Accountability and Responsibility**
The Participant clearly identifies company representative[s] responsible for ensuring implementation of the management systems and associated programs. Senior management reviews the status of the management system on a regular basis.
- 3) **Legal and Customer Requirements**
Identification, monitoring and understanding of applicable laws, regulations and customer requirements.
- 4) **Risk Assessment and Risk Management**
Process to identify the environmental, health and safety² and labor practice and ethics risks associated with Participant's operations. Determination of the relative significance for each risk and implementation of appropriate procedural and physical controls to control the identified risks and ensure regulatory compliance.
- 5) **Improvement Objectives**
Written performance objectives, targets and implementation plans to improve the Participant's social and environmental performance, including a periodic assessment of Participant's performance in achieving those objectives.
- 6) **Training**
Programs for training managers and workers to implement Participant's policies, procedures and improvement objectives and to meet applicable legal and regulatory requirements.
- 7) **Communication**
Process for communicating clear and accurate information about Participant's policies, practices, expectations and performance to workers, suppliers and customers.
- 8) **Worker Feedback and Participation**
Ongoing processes to assess employees' understanding of and obtain feedback on practices and conditions covered by this Code and to foster continuous improvement.

² Areas to be included in a risk assessment for environmental health and safety are production areas, warehouse and storage facilities, plant/facilities support equipment, laboratories and test areas, sanitation facilities (bathrooms), kitchen/cafeteria and worker housing/dormitories.

D. MANAGEMENT SYSTEM (con't.)

- 9) **Audits and Assessments**
Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the Code and customer contractual requirements related to social and environmental responsibility.
- 10) **Corrective Action Process**
Process for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.
- 11) **Documentation and Records**
Creation and maintenance of documents and records to ensure regulatory compliance and conformity to company requirements along with appropriate confidentiality to protect privacy.

E. ETHICS

To meet social responsibilities and to achieve success in the marketplace, Participants and their agents are to uphold the highest standards of ethics including:

- 1) **Business Integrity**
The highest standards of integrity are to be expected in all business interactions. Participants shall prohibit any and all forms of corruption, extortion and embezzlement. Monitoring and enforcement procedures shall be implemented to ensure conformance.
- 2) **No Improper Advantage**
Bribes or other means of obtaining undue or improper advantage are not to be offered or accepted.
- 3) **Disclosure of Information**
Information regarding business activities, structure, financial situation and performance is to be disclosed in accordance with applicable regulations and prevailing industry practices.
- 4) **Intellectual Property**
Intellectual property rights are to be respected; transfer of technology and know-how is to be done in a manner that protects intellectual property rights.
- 5) **Fair Business, Advertising and Competition**
Standards of fair business, advertising and competition are to be upheld. Appropriate means to safeguard customer information must be available.
- 6) **Protection of Identity**
Programs that ensure the confidentiality and protection of supplier and employee whistleblower³ are to be maintained.

³ Whistleblower definition: Any person who makes a disclosure about improper conduct by an employee or officer of a company, or by a public official or official body.

REFERENCES

The following standards were used in preparing this Code and may be a useful source of additional information. The following standards may or may not be endorsed by each Participant.

ILO Code of Practice in Safety and Health

www.ilo.org/public/english/protection/safework/cops/english/download/e000013.pdf

National Fire Protection Agency

www.nfpa.org/catalog/home/AboutNFPA/index.asp

ILO International Labor Standards

www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm

OECD Guidelines for Multinational Enterprises

www.oecd.org

United Nations Convention Against Corruption

www.unodc.org/unodc/en/crime_convention_corruption.html

United Nations Global Compact

www.unglobalcompact.org

Universal Declaration of Human Rights

www.un.org/Overview/rights.html

ISO 14001

www.iso.org

SA 8000

www.cepaa.org/

SAI

www.sa-intl.org

Ethical Trading Initiative

www.ethicaltrade.org/

OHSAS 18001

www.bsi-global.com/index.xalter

Eco Management & Audit System

www.quality.co.uk/emas.htm

DOCUMENT HISTORY

Version 1.0 - Initial Released March 2007. Hitachi GST format.

Version 1.1 - Released February 2009. Page layout revisions; no content changes.

Version 2.0 - Never Released.

Version 3.0 - Released February 2010. Follows EICC format and contains changes from previous version. Includes Hitachi GST addendum.

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The Electronic Industry Code of Conduct was initially developed by a number of companies engaged in the manufacture of electronics products between June and October 2004. Companies are invited and encouraged to adopt this code. You may obtain additional information from www.eicc.info.

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Addendum

A. LABOR

3) Working Hours

At the minimum, Hitachi GST suppliers shall ensure compliance to local legal working hours and rest days requirements.

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Hitachi Global Storage Technologies
Corporate Social Responsibility (CSR) Office
Legal Department
3403 Yerba Buena Road
San Jose, CA 95135
USA

Foreign Corrupt Practices Act Disclosure Statement by Applicant Wishing to Serve as a Sales Representative, Agent or Consultant for FMC Technologies, Inc.

As part of its compliance program for the United States Foreign Corrupt Practices Act, **FMC Technologies, Inc.** and its affiliated companies requires that all applicants (hereinafter referred to as the "Applicant") wishing to be considered for retention as a sales representative, agent or consultant for FMC Technologies in locations outside the United States, provide the following information.

1. General Information

a. Full name of Applicant:

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b. Complete business address:

Telephone number:	
Facsimile number:	
Mobile number:	

c. Indicate type of business organization of Applicant:

- Individual acting as a Sole Proprietorship
- Corporation
- Partnership
- Limited Liability Company
- Other business entity (please describe type): _____

d. Country or Countries where Applicant seek to represent FMC Technologies:

1 st	
2 nd	
3 rd	

(i) Is registry with a Government Authority a requirement for Applicant to conduct of business in the Country?

- 1st Yes No
- 2nd Yes No
- 3rd Yes No

(ii) If above is "yes", is Applicant registered? If "yes", provide registration or tax number

	Yes	No	Registration or Tax Number
1 st	<input type="checkbox"/>	<input type="checkbox"/>	
2 nd	<input type="checkbox"/>	<input type="checkbox"/>	
3 rd	<input type="checkbox"/>	<input type="checkbox"/>	

2. Has Applicant ever provided services for FMC Technologies or any of its affiliates?

- Yes No

3. Has Applicant represented other clients with respect to the conduct of a similar business within the Country?

If "yes", please list all such former or present clients:

4. Has Applicant, any employees of the Applicant or any director or owner of the Applicant ever been the subject of an investigation or criminal law violations, or been convicted of a crime?

If "yes", please give details below:

5. Please list all current and former directors and officers of Applicant (if a business) and all current and former employees of Applicant (if Applicant has fewer than 10 employees):

6. Please list every former or current owner of Applicant (and indicate their period of ownership if a former owner):

7. Please list every company or other business entity which is affiliated with Applicant (an affiliate is a company that Applicant owns at least 10% of):

8. If Applicant is a company, then has any owner, director, officer or employee (former or current) of Applicant served in a salaried or appointive position within the Government of the Country?

Yes No

9. Indicated below whether or not the following is a correct statement (for individual Applicants).

Neither Applicant, Applicant's spouse, nor any member of Applicant's or Applicant's spouse's family, is now serving, or ever has served, in a salaried or appointive position within the Government of the Country?

Correct: Not Correct:

If "Not Correct" was selected, please provide details:

10. Has Applicant ever conducted business under an alias, assumed name, trade name or used any other business name other than the full business name listed above?

Yes No

If "yes", please list the other names below:

11. If Applicant is an individual, please list:

- (a) Every other business for which Applicant is now, or ever has been employed:

- (b) Every publicly-traded company in which Applicant owns more than a 5% ownership interest:

- (c) Every non publicly-traded company or other business entity in which Applicant holds an ownership interest:

12. Please list **THREE** unaffiliated business contacts, and at least one banking institution contact, which FMC Technologies may contact for reference purposes for Applicant:

Business Contacts

Name:	
Business Relationship:	
Address	
Telephone number:	
Mobile number:	

Name:	
Business Relationship:	
Address	

Telephone number:	
Mobile number	

Name:	
Business Relationship:	
Address	
Telephone number:	
Mobile number	

Banking Contact

Name:	
Banking Relationship:	
Address	
Telephone number:	
Mobile number	

13. Are you familiar with the prohibitions of the United States Foreign Corrupt Practices Act?
 Yes No

14. Have you previously been accused of violating the United States Foreign Corrupt Practices Act or engaging in any practice which would be deemed to be the making of an improper payment to a public official?

If so, please explain:

15. Full name of person completing this form for Applicant:

Signature: _____
 Name: _____
 Title/Designation: _____
 Telephone Number: _____
 Date: _____

Supplier Information Sheet

This document is intended for use by Hitachi Global Storage Technologies as a means to solicit and document important business related information to ensure we develop and monitor the condition of our important Suppliers. The strength and capabilities of our key Suppliers become a critical part of our ability to deliver value to our Customers and we must ensure that we have adequate understanding of the organizations with which we do business. For that reason, we request your assistance and support to complete this request for information.

Please note: we are not soliciting nor do we accept information in this disclosure that is considered Confidential. In the event that such information needs to be disclosed, we will need to draft and sign a non-disclosure agreement to cover the exchange.

Section I: General Information – Head Office

Please note: we need this information for all your affiliates if they will be involved in our business together. In this case, affiliate means entities that control, are controlled by, or are under common control with, a party to our Agreement.

Please complete one Appendix B for any company **actually providing the product or service or accepting orders from Hitachi** under this agreement if that company is not the head office covered in this section.

1.1 Full Company Legal Name:

1.2 Full Company Legal Address:

1.3 Where are your Head Offices located if different than your legal address above?

1.4 Please provide a copy of the executive Organization Chart.

1.5 When was your company established?

1.6 How many employees do you have world wide? Please summarize by geography, country or site.

1.7 Who are your Chief Executives? Please cover the functions of CEO, COO, CFO, CIO and the top Quality or Reliability Executive in your company. For smaller companies, these positions may have other names or be a responsibility of the owners or other managers. We are looking for the names of the individuals who perform these responsibilities even if not under these job titles. Also, please provide telephone and/or email contact information with your reply.

Function	Name	Phone	Email
CEO			
COO			
CFO			
CIO			
QA			

1.8 Where are your manufacturing or service sites located? Please summarize by geography, country or site.

1.9 What are the main products you manufacture or services you provide to the market? Please summarize by geography, country or site.

1.10 What type of business do you operate? What are your inventory levels? What is the dollar value of the transactions you process?

1.11 What are the main products you manufacture or services you currently provide to Hitachi?

1.12 Please provide a list of your major customers.

1.13 Do you currently do business with any other disk drive companies or suppliers in the Disk Drive industry? If so, which ones? Where are they located?

1.14 What percent of your total sales are to the Disk Drive industry? Include any existing business you have with Hitachi but exclude any projects for which you do not yet have a formal award.

1.15 Assuming you are awarded this new project, what percent of your total sales would be represented by Hitachi Global Storage Technologies activities? (If this request is in association with a new bid effort)

1.16 At your present operating levels, approximately what percent of your total capacity is being utilized? Please be specific by site as it applies to business with Hitachi.

1.17 Once you are fully engaged in this Hitachi work (assuming you are successful in your bid), approximately what percent of your total capacity will be utilized?

1.18 If the head office is not the organization Hitachi will be contracting with directly and which will actually provide services, include a overview of the company organization showing all subsidiaries and affiliates and how they report into the head office organization.

Section II: Financial Information

2.1 How is your company organized: (e.g. Corporation, LLC, Partnership etc.)?

2.2 If you are Incorporated or a Limited Liability Company, where are you incorporated?

2.3 If your company has shares, are they closely held or are they available for public sale?

2.4 Do you have partners? If you have partners such as in the case of a JV, who are they? Provide full details along with ownership percentages.

2.5 Are financial statements for your company publicly available? If so, please attach the two most recent Balance Sheets and Income Statements to your reply as well as any other financial information you would like to provide us for review.

2.6 Does your company provide financial information to Dunn & Bradstreet or any other similar agency? If so, which ones?

2.7 Is your company now or has it in the past filed for bankruptcy protection?

2.8 If your company financial statements are not available to the public, what financial information will you with Hitachi to help establish that your company has the financial strength to support Hitachi's requirements?

Section III: Other Information

3.1 Hitachi is committed to E-Procurement. In order to set your company up on the tools we use, we will need banking and other information to enable your connection to our supply chain management tools such as E2Open and Electronic Funds Transfers. Will you have any problem providing that information?

3.2 Is your company relying on any patents or licenses you hold to provide us with the products and services we are seeking to buy? If so, please provide us a list of the patents that apply including their title, number and country in which they are filed. Please also include patents pending.

3.3 Is your company a party to any lawsuit or legal action that may have a material impact on your ability to meet Hitachi's requirements? If so, briefly explain.

3.4 Have any of your current employees worked for Hitachi Global Storage Technologies within the past 12 months? If so, please provide their name(s).

Supplier Signature:

Name Date

Title

Hitachi Approvals:			
_____ Procurement	_____ Date	_____ Client	_____ Date

Appendices:

Appendix "A":

This information is needed in order to set up your company on our SAP Procurement System so we can send you Purchase Orders. This information should match the organization that will be invoicing Hitachi.



Hitachi Vendor
Master Data Informal

Appendix "B"

For situations where the entity providing products or services to Hitachi is not the head office indicated in Section 1 above, complete and attach an Appendix B for the organization that will deal directly with Hitachi either as a production site or an ordering point. Please complete this attachment and return it to me with this questionnaire. We can not approve either production or PO activity without this information.



Appendix B.doc



Extras from ACC

We are providing you with an index of all our InfoPAKs, Leading Practices Profiles, QuickCounsels and Top Tens, by substantive areas. We have also indexed for you those resources that are applicable to Canada and Europe.

Click on the link to index above or visit <http://www.acc.com/annualmeetingextras>.

The resources listed are just the tip of the iceberg! We have many more, including ACC Docket articles, sample forms and policies, and webcasts at <http://www.acc.com/LegalResources>.