Agenda

► Overview / Regulatory Environment

► Elements of an Effective Anti-Corruption Program

► Compliance Framework / Program

► Q&A
Overview / Regulatory Environment
1. **Corruption is a growing problem** for businesses and executives.
   - 1 in 4 respondents said their company had experienced an incident of bribery and corruption in the past 2 years.
   - 23% of respondents knew that someone in their company had been solicited to pay a bribe to win or retain business.
   - 18% of respondents said they knew that their company had lost business to a competitor who had paid a bribe.

2. **Regulatory enforcement is significantly stronger than in the past.** Foreign bribery investigations by prosecutors in OECD countries have increased five fold from 51 cases in 2005 to 270 cases in 2007. Individuals are increasingly being targeted for prosecution as well.
   - Over two-thirds of our respondents said laws and regulations against bribery and corruption were being enforced at least fairly strongly.
   - Almost 70% of respondents noted that enforcement has become stronger in their locality during the past five years.

3. **Basic anti-corruption knowledge & compliance is lacking** when companies’ standard processes are questioned.
   - Only one-third of respondents claimed to have some knowledge about the FCPA, and 58% of senior in-house counsel were not familiar with the FCPA.
   - 43% of our respondents indicated that their company did not have specific procedures in place for dealing with government officials.
   - 44% of our respondents indicated that their company did not have specific procedures in place for identifying parties related to government officials.

4. **Reliance placed on internal audit** to detect.
   - Over two-thirds of respondents believed that their internal audit teams had sufficient knowledge to detect bribery and corrupt practices and half thought compliance-focused audits were successful in mitigating these risks.

5. **Companies are failing to weigh corruption risks during due diligence.**
   - Thirty percent of respondents had never considered bribery or corruption risks in the context of a potential acquisition – or had done so only infrequently.
Regulatory environment

- Increased enforcement from U.S. Regulators
  - Major enforcement priority
  - Prosecution of cases & levying of significant fines & penalties
  - SEC formed an FCPA Special Unit, dedicated to FCPA investigations and enforcement actions

- Passage of the U.K. Bribery Act
  - Passed in April 2010 and slated for implementation in October 2010
  - Deferred implementation twice
  - Implemented on July 1, 2011

- Dodd-Frank Act (Whistleblower Provisions)
  - Enacted on July 21, 2010
  - SEC adopted rules in May 2011

- Increased international cooperation
Many countries and international organizations have adopted anti-bribery laws and regulations and have increased enforcement to target corruption.

- UK Bribery Act (2011)
- UN Convention Against Corruption (2005)
- Inter-American Convention Against Corruption (1996)
The UK Bribery Act was passed by Parliament in April 2010 and it entered into force on July 1, 2011.

Strong message that the Act and compliance with it is “largely about common sense, not burdensome procedures”

Principle of proportionality introduced – strong emphasis on risk-based approach

The Act creates four offenses:
  - Two general offenses covering the offering and receiving of a bribe
  - A separate offense of bribing a foreign public official
  - A new corporation offense of failing to prevent bribery

Draws no distinction between public sector and private sector bribery, bringing into its remit business-to-business bribery

Has no exemption for facilitation (grease) payments or for promotional expenditures

Introduces an explicit offense of failing to prevent bribery by associated parties
FCPA – Overview

► Foreign Corrupt Practices Act ("FCPA") was enacted in 1977

► Two principal provisions
  ► Anti-bribery – Prohibits bribery (corrupt payments) to foreign officials to obtain or retain business
  ► Books and records – Requires companies with securities registered under the Securities Exchange Act of 1934 to make and keep appropriate books and records and to maintain a system of adequate internal accounting controls. (These provisions are not limited to accounting for corrupt foreign payments or any other particular type of transactions.)

► Fines, penalties & other sanctions
  ► Criminal and civil penalties
  ► Injunctive relief
  ► Deferred prosecution agreements
FCPA anti-bribery provisions: Elements

► No *issuer, domestic concern*, person in U.S.

► May *corruptly*

► Take action *in furtherance of* payment or a promise, offer or authorization of payment

► Of a bribe or *anything of value*

► *Directly or indirectly*

► To a *foreign official*

► To *obtain or retain business or improper advantage*
FCPA prosecutions

Number of FCPA Enforcement Actions:

<table>
<thead>
<tr>
<th>Year</th>
<th>SEC</th>
<th>DOJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>2005</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>2006</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>2007</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>2008</td>
<td>40</td>
<td>0</td>
</tr>
<tr>
<td>2009</td>
<td>50</td>
<td>0</td>
</tr>
<tr>
<td>2010</td>
<td>60</td>
<td>10</td>
</tr>
<tr>
<td>2011</td>
<td>70</td>
<td>10</td>
</tr>
</tbody>
</table>
Anti-Corruption Compliance Program
Why addressing corruption is important?

FCPA monetary penalties

Monetary settlements

<table>
<thead>
<tr>
<th>Company (Headquarters)</th>
<th>Amount</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Siemens (Germany)</td>
<td>$800 Million</td>
<td>2008</td>
</tr>
<tr>
<td>Halliburton / KBR (USA)</td>
<td>$579 Million</td>
<td>2009</td>
</tr>
<tr>
<td>BAE Systems (UK)</td>
<td>$400 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Snamprogetti / ENI (Holland/Italy)</td>
<td>$365 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Technip SA (France)</td>
<td>$338 Million</td>
<td>2010</td>
</tr>
<tr>
<td>JGC Corp (JGC)</td>
<td>$219 Million</td>
<td>2011</td>
</tr>
<tr>
<td>Daimler AG (Germany)</td>
<td>$185 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Alcatel-Lucent (France)</td>
<td>$137 Million</td>
<td>2010</td>
</tr>
<tr>
<td>Magyar Telekom (Hungary)</td>
<td>$ 95 Million</td>
<td>2011</td>
</tr>
<tr>
<td>Panalpina (Switzerland)</td>
<td>$ 82 Million</td>
<td>2010</td>
</tr>
</tbody>
</table>
### Selected enforcement matters

*Note: Matters profiled here were the subject of various allegations by the govt.; cases were settled without a trial.*

<table>
<thead>
<tr>
<th>Company</th>
<th>Time period under review</th>
<th>Fines &amp; penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Marubeni Corporation</strong></td>
<td>Years 1995-2004</td>
<td>$54.6 million (DOJ)</td>
</tr>
<tr>
<td><strong>Smith &amp; Nephew</strong></td>
<td>Years 1998-2008</td>
<td>$22.2 million, $16.8 M fines (DOJ), $5.4 M disgorgement (SEC)</td>
</tr>
<tr>
<td><strong>Armor Holdings</strong></td>
<td>Years 2001-2006</td>
<td>$16 million, $10.3 M fines (DOJ), $5.7 M disgorgement (SEC)</td>
</tr>
</tbody>
</table>

- **Company:**
  - Marubeni Corporation
  - Smith & Nephew
  - Armor Holdings

- **Fines & penalties:**
  - Marubeni Corporation: $54.6 million (DOJ)
  - Smith & Nephew: $22.2 million, $16.8 M fines (DOJ), $5.4 M disgorgement (SEC)
  - Armor Holdings: $16 million, $10.3 M fines (DOJ), $5.7 M disgorgement (SEC)

- **Settlement announcement:**
  - January 2012
  - February 2012
  - February 2012

- **Time period under review:**
  - Years 1995-2004
  - Years 1998-2008
  - Years 2001-2006

- **Countries:**
  - Nigeria
  - Greece
  - United Nations

- **Issue:**
  - Acted as TSKJ joint venture agent, and paid bribes to Nigerian officials to obtain construction contracts
  - Payment of cash incentives to public-sector health care providers through distributors and offshore accounts
  - Falsely recorded commission payments that were used to induce a U.N. procurement official to award two contracts to Armor

- **Other notes:**
  - Received approximately $51 M from TSKJ joint venture for use for bribes and as payment for services
  - Authorized payment of approximately $9.4 M to distributors
  - An additional $4.4 million in payments was kept off books and records
  - Smith & Nephew cooperated with DOJ
  - Armor cooperated with DOJ and the SEC
## Selected enforcement matters

[Note: Matters profiled here were the subject of various allegations by the govt.; cases were settled without a trial.]

<table>
<thead>
<tr>
<th>Company</th>
<th>Fines &amp; penalties</th>
<th>Settlement announcement</th>
<th>Time period under review</th>
<th>Countries</th>
<th>Issue</th>
<th>Other notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bridgestone Corporation</strong></td>
<td>$28 million (DOJ)</td>
<td>September 2011</td>
<td>Years 1999-2007</td>
<td>Latin American Countries</td>
<td>Conspired to rig bids, fix prices in the US, and made corrupt payments to government officials in Latin America</td>
<td>Fifth company to be charged in the bid rigging investigation</td>
</tr>
<tr>
<td><strong>Aon Corporation</strong></td>
<td>$16.2 million $1.7 M fines (DOJ) $14.5 M disgorgement (SEC)</td>
<td>December 2011</td>
<td>Years 1997-2005</td>
<td>Costa Rica</td>
<td>Training fund for Costa Rica’s state-owned insurance company (“INS”), used to reimburse company officials for vacation and travel</td>
<td>Reimbursed expenses for INS officials included spousal travel to tourist destinations</td>
</tr>
<tr>
<td><strong>Magyar Telekom, Plc.</strong></td>
<td>$95.1 million $63.9 M fines (DOJ) $31.2 M disgorgement (SEC)</td>
<td>December 2011</td>
<td>Years 2005-2006</td>
<td>Macedonia</td>
<td>Entered into an agreement with high-ranking officials to delay the entrance of a third mobile license into the telecommunications market</td>
<td>Engaged with Greek third party intermediary’s to pay approximately $6 million to Macedonian officials</td>
</tr>
</tbody>
</table>

- Bridgestone cooperated with DOJ
- Aon cooperated with SEC and UK FSA
### Selected enforcement matters

*Note: Matters profiled here were the subject of various allegations by the govt.; cases were settled without a trial.*

<table>
<thead>
<tr>
<th>Company</th>
<th>Fines &amp; penalties:</th>
<th>Settlement announcement</th>
<th>Time period under review:</th>
<th>Countries:</th>
<th>Issue:</th>
<th>Other notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technip SA</td>
<td>$338 million&lt;br&gt;$240 M fines (DOJ)&lt;br&gt;$98 M (SEC)</td>
<td>June 2010</td>
<td>Years 1995-2004</td>
<td>Nigeria</td>
<td>Payment bribes through its agents to Nigerian officials to obtain construction contracts</td>
<td>Paid $182 M in bribes&lt;br&gt;One payment, $1M was delivered in a briefcase to a Nigerian hotel</td>
</tr>
<tr>
<td>JGC Corporation</td>
<td>$218.8 million (DOJ)</td>
<td>April 2011</td>
<td>Years 1995-2004</td>
<td>Nigeria</td>
<td>Payment bribes through its agents to Nigerian officials to obtain engineering, procurement and construction contracts</td>
<td>JGC, Kellogg Brown &amp; Root Inc., Technip S.A. and Snamprogetti Netherlands B.V. collectively known as, TSKJ joint venture, was awarded four contracts by Nigeria LNG Ltd.</td>
</tr>
<tr>
<td>Johnson &amp; Johnson</td>
<td>$77 million&lt;br&gt;$48.6 M disgorgement (SEC)&lt;br&gt;$21.4 M fines (DOJ)&lt;br&gt;$ 7.0 M penalty (UK SFO)</td>
<td>April 2011</td>
<td>Years 2002-2005 (disclosed to DOJ in 2007)</td>
<td>Greece, Poland &amp; Romania</td>
<td>Payment of commissions to public-sector doctors through the use of agents and offshore accounts</td>
<td>J&amp;J “cooperated extensively with the government”&lt;br&gt;DOJ referred to SFO (UK)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>J&amp;J acquired DePuy in 1999</td>
<td></td>
</tr>
</tbody>
</table>
Elements of an Effective FCPA / Anti-Corruption Program
Elements an Effective FCPA Program

The DOJ has interpreted the minimum requirements of an effective FCPA compliance program, including:

► Having a **corporate policy** against violations of the FCPA and **standards and procedures** designed to reduce the prospect of fraud

► Assignment of senior people to **oversee compliance**, including personnel in operations, legal, and HR functions

► Performance of **due diligence** in the retention of third parties representing the organization (i.e., agents) with foreign government officials and in mergers and acquisitions, and agreements with third parties that compel them to comply with the law

► Effective **communication** of policies and procedures throughout the organization and **training** on these FCPA policies

► A **system for reporting** potential violations without retribution against those who report, and timely follow-up investigation and remedial action taken when violations are uncovered or policies or controls need improvement

► A **system of monitoring** the effectiveness of the compliance program, including FCPA compliance audits to identify any red flags in the business operations
Risk assessment – Areas to consider

- General
  - Industry sector
  - Regulatory environment & enforcement
  - Changes in business

- Geography
  - High-risk countries
  - Emerging markets
  - Area-specific risks & schemes

- Risk management structure
  - Regional vs. local
  - On-site presence
  - Connection to corporate

- Local customs & practices

- Business environment

- Business model
  - Interactions with government officials
  - Use of 3rd parties (distributors, agents, consultants, JVs)
  - Sales channels
  - Customer base
  - Company-specific “red flags”

- Refresh periodically
BPI is a measure of business people’s views on the likelihood of bribes being paid by companies in different business sectors.

*Note: The lower the score, the greater that bribery risk.*
CPI helps stratify countries into perceived levels of corruption
“Red flags” to consider

► Business profile
  ► Business in high-risk countries
  ► Operations in high-risk industry
  ► High level of interaction with government-affiliated personnel / organizations

► Tone from the top
  ► Weak corporate governance
  ► No code of conduct and/or non-specific training and guidelines
  ► Decentralized operations / Corporate messaging v. local reality

► Operating experience
  ► Use of third parties, consultants, JVs and other business partners (e.g., distributors, logistics & other agents, service providers, etc.)
  ► Absence of / limited due diligence re: business partners
  ► Poor controls over disbursement substantiation and approvals
  ► Lack of guidelines re: travel & entertainment, gifts and product promotion
  ► History of actual or alleged improper payments
Compliance Framework / Program
Components of an effective anti-fraud, bribery and corruption compliance program

<table>
<thead>
<tr>
<th>Setting the Proper Tone</th>
<th>Proactive</th>
<th>Reactive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code of Ethics</td>
<td>Risk Assessment</td>
<td>Incident Response Plan</td>
</tr>
<tr>
<td>Prevention Policies &amp; Procedures</td>
<td>Controls Monitoring and Analytics</td>
<td></td>
</tr>
<tr>
<td>Communication and Training</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Elements of a successful corporate anti-fraud, bribery and corruption program:

- Management Ownership and Involvement

Anti-fraud, bribery and corruption key activities:

- Corporate compliance program design
- Corporate compliance assessment
- Gap analysis
- Future state design session
- Discovery response planning
- Records and information management
- Who owns fraud?
  - Assign roles and responsibilities
  - Fraud and risk committee formulation
  - Customized training
  - Corporate governance
  - Design sessions
  - Corporate anti-fraud roadmap
  - FCPA / Anti-bribery compliance assessments
- Fraud risk assessment
  - Targeted anti-fraud analytics
  - Anti-fraud, bribery & corruption Analytics
  - M&A / JV due diligence
  - 3rd Party Due Diligence
    - Vendor risk profiling
    - Vendor vetting
    - * Level I, II, III background checks
- Investigations
  - Response plan
  - Discovery and document review
  - Forensic data analytics
  - Assessment & remediation
  - Continuous improvement
Setting the Proper Tone

A robust anti-fraud, bribery and corruption program includes:

► Executive management involvement
► Employee code of ethics
► Clear company fraud prevention policies
► Communication and awareness of policies
► Continuous training and education on anti-fraud policies
► Disciplinary action and zero tolerance for violations
► Communication of violations and disciplinary actions
Code of Ethics

► Development
► Documentation
► Communication
► Disciplinary Actions
► Global Operations
► Monitoring
Fraud and Corruption Prevention Policies & Procedures

Fraud prevention policies should also include internal controls preventing fraud, such as:

► Policies, procedures and financial controls around high-risk areas, such as dealings with governments, government-owned entities, customs, licensing and other authorities, regulators, agents and other third parties

► Internal controls surrounding cash, petty cash, expense authorization and reimbursement

► Controls around gift giving, travel and entertainment of government officials, and charitable contributions

► Extensive background checks on new-hires, suppliers, customers, and business partners

► Segregation of duties
Communication & Training

► After policies and procedures are developed they must be effectively communicated
  ► Management involvement in delivering the message
  ► In-person and web-based training
  ► Positive affirmation of policies
    ► Periodic reminders – once is not enough
    ► Consider annual confirmation for high risk functions
  ► Training people to recognize and report red flags
    ► Special training for finance professionals
    ► Special training for senior executives
    ► Special training for others in high-risk positions (i.e. business developers, sales and marketing)
  ► Broad rollout of anti-corruption measures
Purpose of fraud risk assessments

- To demonstrate that management is setting the proper tone within the organization regarding fraud
- To understand vulnerabilities within the company
- To identify and evaluate areas that pose a higher risk of fraud
- To identify where the company should focus its anti-fraud resources
- To identify areas of improvement
Controls Monitoring & Analytics

Internal
► Hotline
► Whistleblower allegations
► Concerns raised by employees
► Internal Audit findings

External
► Industry issues and events
► External auditor
► Analysts
► Regulator questions – e.g. SEC, DOJ, IRS
► Other business events (e.g., commercial disputes, loan defaults, business failure)
Incident Response Plan

► Receive the allegation
► Understand the nature of the allegation
  ► Determine whether it involves a potential violation of laws, rules, or company policy (establish privileged as appropriate)
  ► Ask the following questions:
    ► What is the source of the allegation
    ► When and where did the events occur and over what period of time
    ► What evidence may exist
    ► Who may be involved
    ► Who is likely to have relevant knowledge or information
    ► What will be the role of each stakeholder
► Determine the appropriate course of action
  ► Consult the necessary resources to determine the “next steps”
  ► Assemble the team to conduct the investigation
  ► Preserve the data, especially electronic data
Lessons Learned from Recent Prosecution Cases

► Be proactive
  ► Effective training
  ► Risk assessment
  ► Early detection is key

► Conduct meaningful due diligence
  ► Identify and understand ‘red flags’
  ► Focus on agents and business partners

► Monitor effectively
  ► Diagnostics
  ► Effective internal audit
  ► Internal coordination
Thank You

Amy Hawkes – Partner
Fraud Investigation & Dispute Services
amy.hawkes@ey.com
213-977-3720

Hana Ariga Shaver – Senior Manager
Fraud Investigation & Dispute Services
hana.shaver@ey.com
213-977-3937