



EMERGING TRENDS IN IN-HOUSE COUNSEL COMPLIANCE STRATEGIES

Moderated Peer Discussion

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Please Note

This roundtable is designed to provide accurate information about the subject matter. However, it only provides general information and does not constitute legal advice. No attorney-client relationship has been created. If legal advice or other assistance is required, let us know directly.

Preliminary Considerations

- This platform should not be used for activities prohibited by antitrust law.
- Avoid discussions leading to a restriction, or coordination, of competition between or among attendees.
- Attendees should not share information, have discussions, and/or make arrangements on, among other things, pricing, market conduct, terms of sale, individual manufacturing costs and costs of sale, output, or supplier or customer relations/allocation.

Operationalizing Compliance

- Companies must “operationalize compliance” by integrating it into business process
- “Embed compliance into business operations...make sure compliance and ethics start at the top of the organization.” [Reference: U.S. Department of Justice (DOJ) Fraud Section’s February 2017 Evaluation of Corporate Compliance Programs guidance, referencing the FCPA Resource Guide and the Hallmarks of Effective Compliance Programs.]
- The role of in-house counsel in compelling the business to “own” compliance
 - Incentivized to do the right thing
 - Becomes part of their operational rhythm
 - Assign accountability and authority
- Role of codified policies, procedures and standard work

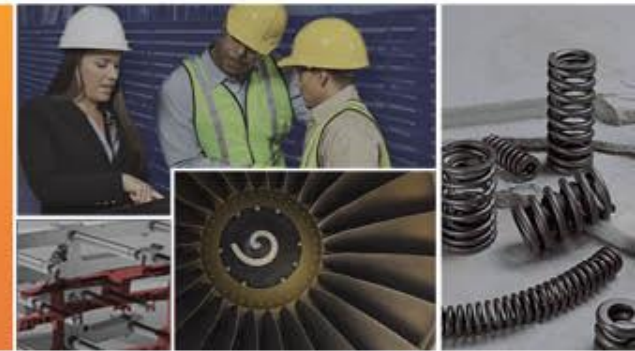
Developing a “Speak-Up” Culture?

- Answering the Why & How: Mandatory v. Discretionary
 - Knowing the applicable laws and regulations in broadening world of compliance
 - Clear policies & practices
- Internal v. External; public v. privately held companies
 - The impact of Digital Realty Trust Inc. v. Somers (decided 2/21/2018)
- From checking the box to culture of compliance
 - Securing employee commitment and trust
 - Hotline v. BPO, other in-person reporting
 - Non-retaliation assurances
 - Management team properly trained and advised
 - Avoiding the domino effect of getting it wrong
 - Don't be Uber (or Fox, or NBC, or...)
 - Corporate “common good”:
 - moving beyond the aspirational
 - Incentivizing v. encouraging embellishments

Third Party Risk Management

Jim Pelletier

Segment General Counsel, Barnes Aerospace



Go to: PollEv.com/jimpelletier262

SEC Actions in 2018 Continue to Grab Headlines . . .

\$1.78B

Petroleo Brasileiro S.A

Brazil-based oil-and-gas company agreed to pay \$1.78 billion in a global resolution arising out of a massive bribery and bid-rigging scheme. (9/27/18)

\$143M

Panasonic Corp.

Japan-based Panasonic Co. agreed to pay more than \$143 million to resolve FCPA charges involving a consulting position it offered to a Japanese government official at a state-owned airline to induce the official to help its U.S. subsidiary in obtaining and retaining business from the airline. (4/30/18)

\$14M

UTC

UTC, as a result of conduct by Otis and PW/IAE divisions, agreed to pay nearly \$14 million to settle charges that it made illicit payments to facilitate sales of elevators and aircraft engines. (9/12/18)

Go to: [PollEv.com/jimpelletier262](https://www.poller.com/jimpelletier262)

An enforcement landscape that continues to ramp . . .

Evolving Legal Landscape . . .

Coverage of the FCPA

August 24, 2018: Second Circuit overturned an expansive read of the FCPA that would have extended jurisdiction to cover a non U.S. actor who conspired to commit bribery of an Indonesian official on behalf of a non-U.S. subsidiary of Alstom Corporation – *United States v. Hoskins*, -- F.3d -- (2d Cir. Aug. 24, 2018).

Successor Liability

July 25, 2018: DOJ stated that successor companies continue to have liability for acquired companies but there is a recognition “a successor company’s voluntary disclosure, appropriate due diligence, and implementation of an effective compliance program may . . . decrease the likelihood of an enforcement action regarding an acquired company’s post-acquisition conduct when pre-acquisition due diligence is not possible.” . . . -- *Remarks by Deputy Assistant Attorney General Matthew S. Miner at ACI 9th Annual Conference.*

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With continually evolving jurisprudence and guidance . . .

Where do you currently rank FCPA/third party compliance in terms of risk at your company?

#1 risk for my company **A**

Within the top 5 risk items for my company **B**

Not a key risk item for my company given our size, market position, etc **C**

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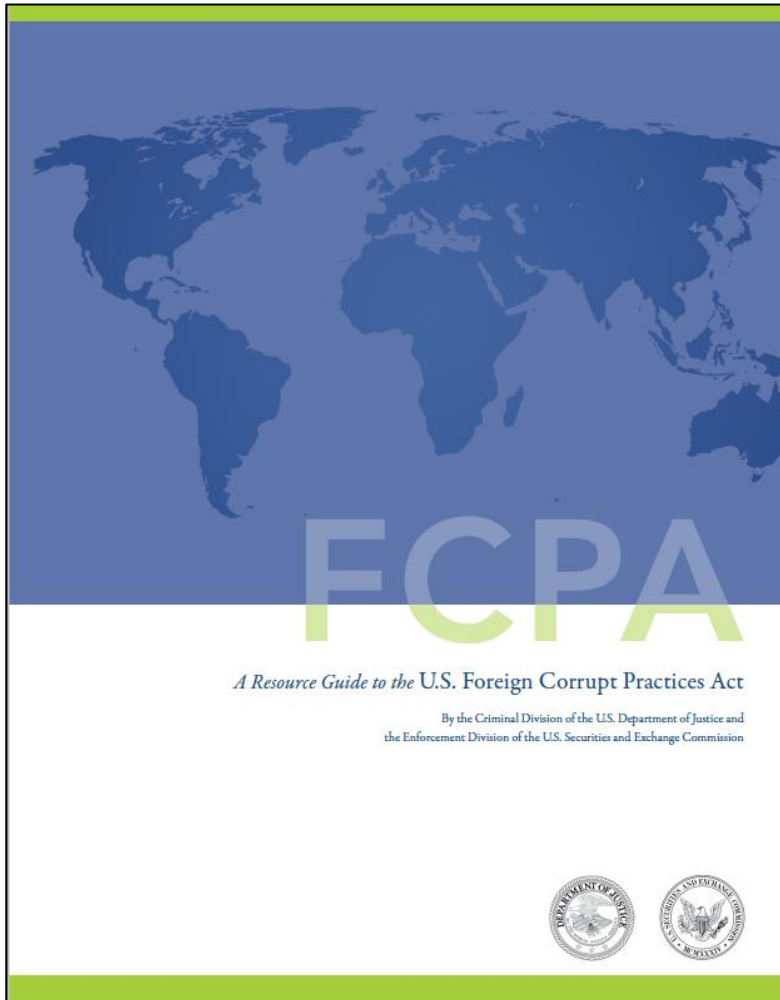
Which aspect of third party risk compliance is most likely to keep you up at night?

The complexity of the regulations

Creating a compliance culture / getting my sales team "in the game"

Getting a solid background check on third party reps

The DOJ's FCPA Resource Guide

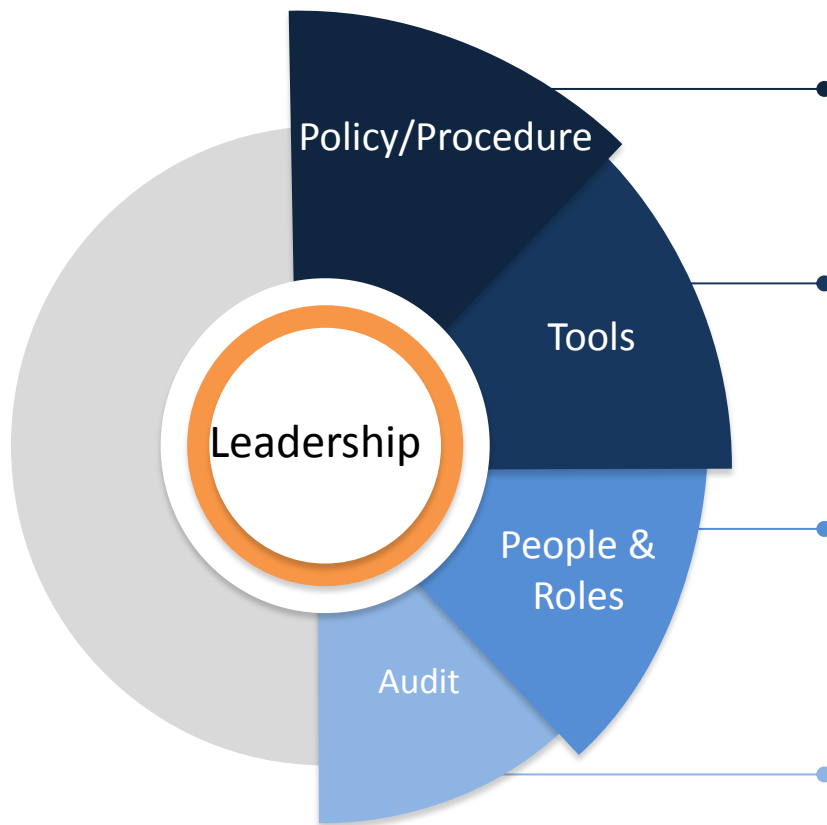


Hallmarks of an Effective Compliance Program

- ✓ Commitment from senior management and a clearly articulated policy against corruption;
- ✓ Code of conduct and compliance policies and procedures;
- ✓ Oversight, autonomy, and resources;
- ✓ Risk assessment;
- ✓ Training and continuing advice;
- ✓ Incentives and disciplinary measures;
- ✓ Third-party due diligence and payments;
- ✓ Confidential reporting and internal investigation;
- ✓ Continuous improvement/periodic testing and review
- ✓ M&A; pre-acquisition due diligence and post-acquisition integration

Operationalizing Third-Party Risk Mitigation

Program Elements



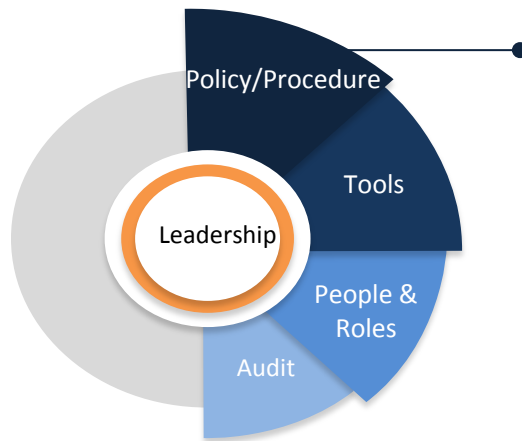
- Policy / Code of Ethics
- What is the company's stance on the usage of third parties?

- Screening tools and templates?
- Standard contractual templates?

- Who owns compliance with the requirements?
- Who files annual certifications?

- Scope of periodic audits?
- Who audits?

Operationalizing Third-Party Risk Mitigation

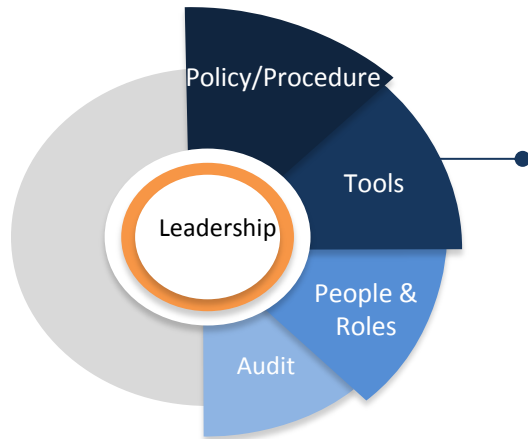


- Policy / Code of Ethics
- What is the company's stance on the usage of third parties?

Have you Considered:

- ✓ A policy that applies to all officers, directors, employees and third parties such as suppliers, agents, distributors, etc.?
- ✓ Clear lines of responsibility and oversight?
- ✓ A statement of commitment to compliance from the CEO / Board?
- ✓ A reporting procedure involving a neutral reporting avenue?

Operationalizing Third-Party Risk Mitigation




- Screening tools and templates?
- Standard contractual templates?

Have you Considered:

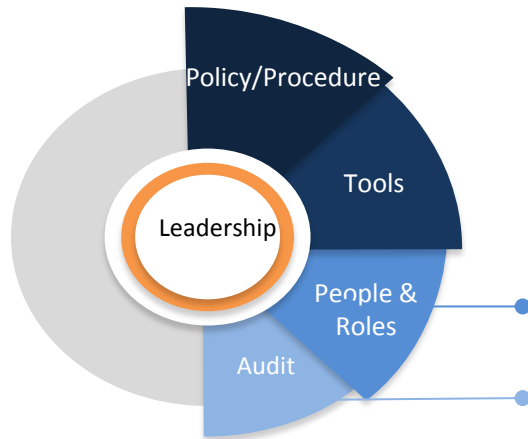
- Standard Contract?
 - Reps & covenants related to FCPA compliance
 - Audit rights, based on a reasonable suspicion
 - Termination rights for failure to provide adequate assurances
 - Ability to require full disgorgement of fees paid to date + damages
 - Flat fee vs. commission based
- Other?
 - Audited financial statements? Bank account verification?
 - In-person meeting?
- Screening Tools?
 - TRACE
 - Thompson-Reuters World Check, Others?

Which services do your companies use to conduct background checks on third parties?

 When poll is active, respond at **PollEv.com/jimpelletier262**

 Text **JIMPELLETIER262** to **22333** once to join

Operationalizing Third-Party Risk Mitigation



- Who owns compliance with the requirements?
- Who files annual certifications?

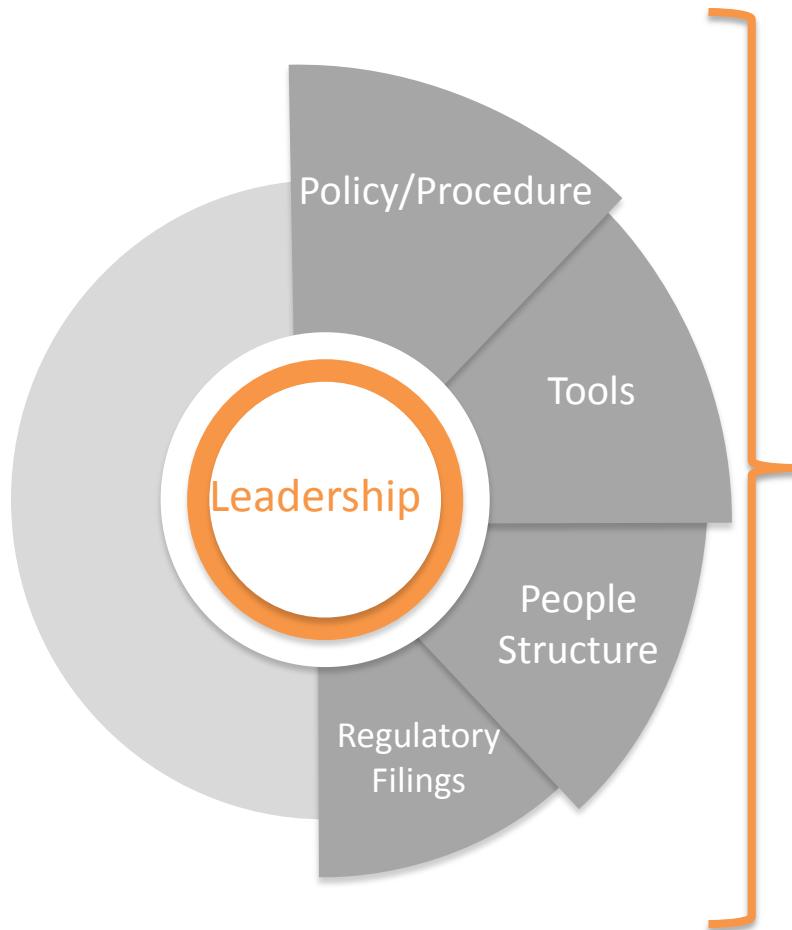
- Scope of periodic audits?
- Who audits?

Have you Considered:

- Assigning a business “sponsor” to the third party? Legal ownership vs. Business ownership . . .
- Mandating that the business sponsor furnish annual compliance certification?
- Adding audits of the background checks, contract and annual certifications?
Using Internal Audit?

Operationalizing Third-Party Risk Mitigation

... The role of Leadership



- The role of leadership in mitigating third-party risk is critical.
- Can our leaders articulate the business need? Do we really understand it?
- Would they speak for this third-party's reputation? Have they met them?
- Are we willing to make the tough calls?
- Can we pass the leadership test?

Other Resources

- The United States Attorney's Manual
- The United States Sentencing Guidelines
- A Resource Guide to the U.S. Foreign Corrupt Practices Act ("FCPA Guide") published in November 2012 by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC)
- Good Practice Guidance on Internal Controls, Ethics, and Compliance adopted by the Organization for Economic Co-operation and Development ("OECD") Council on February 18, 2010
- Anti-Corruption Ethics and Compliance Handbook for Business ("OECD Handbook")

Cybersecurity

- **GDPR and data privacy rules, generally**
 - Data privacy laws in the EU regulate the processing of personal data, both online and offline.
 - Rules apply to every organization — public and private — that collects and uses personal information in the EU.
 - The laws provide that those who collect and process personal data must do so under strict conditions and only for legitimate purposes, often conditioned upon the data subject's consent. Collectors and processors must protect the data from misuse and must respect the privacy and other rights of individuals that are guaranteed by EU law.

Cybersecurity (cont.)

- The role of in-house counsel in ensuring that the business understands the rules and takes appropriate steps to remain compliant
 - Robust information security programs is required for virtually all aspects of a company (e.g., finance, IP, contracting, engineering, HR, quality, customer service)
 - US Government/DOD cybersecurity requirements
 - Tools available to promote appropriate cybersecurity protections

Conclusion

Questions?