PRESENTER
AND
CONTACT
INFORMATION

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Compliance Evangelist
The Compliance Handbook

A Guide to Operationalizing Your Compliance Program

By Tom Fox

Order now at amazon.com
The views stated here are solely those of the presenter.

Everything in this presentation is a generalization and is subject to numerous exceptions.
WHAT IS YOUR STORY?
What is the story in your data?

Patterns in raked leaves?

What data do you have at your disposal?

Are you accessing your own data?
FRAUD AND CORRUPTION
Top 4 Indicia of Corruption-2018 Report to the Nations

1. Living beyond means
2. Unusually close to vendor/3rd party/customer
3. Financial difficulties
4. Wheeler-Dealer attitude
Who perpetrates corruption?

1. Manager-38%
2. Owner/Executive-32%
3. Employee-27%
4. Other-3%
SOME NUMBERS
TOP TEN FCPA ENFORCEMENT ACTIONS-2019 & 2018

2019
1. Telia Company - $965MM in 2017
2. MTS - $850MM in 2019
3. Siemens - $800 MM in 2008
5. Alstom - $772 million in 2014
6. KBR / Halliburton - $579 MM in 2009
8. Keppel Offshore & Marine Ltd. – $422 MM in 2017
10. BAE - $400MM in 2010

Source: FCPA Blog

2018
1. Petrobras-$1.78 bn in 2018
2. Telia Company - $965 MM in 2017
3. Siemens - $800 MM in 2008
5. Alstom - $772 MM in 2014
6. Société Générale-$585 MM in 2018
8. Teva Pharmaceutical - $519 MM in 2016

Source: FCPA Blog
TOP TEN GLOBAL ENFORCEMENT ACTIONS

2018 Top 10 International Anti-Corruption Enforcement Penalties

1. JBF-Brazil-$3.6 bn-Brazil
2. Odebrecht/Braskem-$2.6 bn-US, Switzerland and Brazil
3. Siemens-$1.6bn-Germany and US
5. Alstom-$814 in US and Switzerland
6. Rolls-Royce-$809MM -UK, US and Brazil
7. Vimpelcom-$795MM-US and The Netherlands

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10. SocGen-$585 MM - US and France
KEY QUESTIONS TO ASK
FROM 2018 FCPA ENFORCEMENT ACTIONS

1. Credit Suisse AG—who reviews hiring?
2. Panasonic Avionics—who reviews 3rd parties?
3. Stryker—are you still issuing per diems?
4. Petrobras—are customers in on the fraud?
5. Sanofi—distributors
   a. Exceptions for standardized distributor discounts?
   b. Who monitors distributor promotional spend?
   c. Who conduct audits affiliate internal controls?
- **Purchase Price paid for original licenses**
  - $100MM v. $12MM

- **Business Justification**
  - unattractive to MTS’s development strategy
  - transaction is a toxic one
  - maybe, there are hidden economic factors that will not be disclosed to an external expert

**Business Valuations**
- $40 million for Kolorit, substantially more than the $23 million valuation of the company
- pure fairy tale!
## MTS-Charitable Donation

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INTO 2019
Regime Change

MALAYSIA
SOUTH AFRICA
BRAZIL
ANGOLA
DRC
The Big One
Key Areas of Compliance Program Concern

- REEXAMINE AND REINVIGORATE INTERNAL CONTROLS
- ROOT CAUSE ANALYSIS
- UPDATED RISK ASSESSMENT
- AUDITING OF THIRD-PARTIES IN 2019
- CUSTOMERS
LILLY

- Poland - charitable contributions tied to new business or payments
- Approximately $225,000 in charitable donations over 3 years. Highest amount $7500
- Spike in sales of 69% in Year 1; then 78% in Year 2
KEY ENERGY

- 1st SEC enforcement action to discuss transaction monitoring
- Christmas gift giving increase from $55K in 2010 to $118K in 2012
- 2 contract extensions during time frame
THE SALES CYCLE
Life-Cycle of a Business Transaction

1. PRE-SALE-RFP/BID/SALES INITIATIVE
2. PRE-BID-GIFTS/ENTERTAINMENT/TRAVEL
3. SALES PRICING-DISCOUNT RANGE
4. REBATES PAID TO CUSTOMER
Pre-Sales

1. WHAT IS THE AGGREGATE SPENDING ON ANY ONE GOV OFFICIAL OVER A 12-MONTH PERIOD BY ONE BD REPRESENTATIVE?
2. WHAT IS THE BD SPEND ON ONE GOV OFFICIAL BY SEVERAL COMPANY BD REPRESENTATIVES?
3. HAS THERE BEEN ANY TRAVEL INVOLVED TO TOUR COMPANY FACILITIES?
4. WHAT WAS THE AGGREGATE SPEND AND WAS IT CORRELATED WITH OTHER GTE SPENDS?
1. ANY DISCOUNTS OFFERED OUTSIDE THE STANDARD DISCOUNT RANGE?
2. WERE THESE DISCOUNTS PROPERLY VETTED THROUGH THE INTERNAL COMPANY PROCESS?
3. WAS THIS PROCESS DOCUMENTED AND WAS THERE SENIOR MANAGEMENT SIGN-OFF IN PLACE?
4. WAS THE CONTRACT PROPERLY VETTED BY ALL REQUIRED INTERNAL PROCESSES: BY MANAGEMENT, LEGAL, AND COMPLIANCE?
Third Parties

1. DID THE CUSTOMER SUGGEST THE USE OF ANY THIRD PARTIES AS SUPPLIERS TO THE PRIME CONTRACT?
2. WHAT WAS THE 3RD PARTY COMMISSION OR COMPENSATION?
1. WERE THERE ANY CHARITABLE DONATIONS REQUESTED BY THE CUSTOMER?
2. WERE THERE ANY CHARITABLE DONATIONS MADE DURING ANY PART OF THIS PROCESS OR WITHIN 12 MONTHS AFTER A SUCCESSFUL CONTRACT NEGOTIATION?
1. DID IT SPECIFY ANY TRAVEL FOR THE CUSTOMER?
2. HOW ABOUT ONGOING TRAINING AND IF SO WHERE AND FOR HOW LONG?
3. WAS THERE A SPECIFICATION OF BUSINESS CLASS OR ABOVE TRAVEL ACCOMMODATIONS?
4. WAS THERE ANY CORPORATE SOCIAL RESPONSIBILITY (CSR) REQUIREMENT GOING FORWARD?
5. DOES COMPLIANCE HAVE VISIBILITY INTO THIS OR DOES IT GO THROUGH A COMPANY CHARITABLE DONATION GROUP OR COMMITTEE?
QUESTIONS?