

A GROWING ANTI-CORRUPTION PHENOMENON: FCPA AND ITS GLOBAL IMPACT

“The Foreign Corrupt Practices Act (FCPA) / Anti Bribery Alert Winter 2015” has been published by Hughes Hubbard & Reed LLP. The report proves that the FCPA remains alive and well!

The report states that penalties imposed by U.S. regulators in 2014 were greater than the previous fines leveled in 2011, 2012 and 2013 combined. New resources have been dedicated to continued enforcement. The collective impact of these actions conclusively dismisses any suspicions that the DOJ and SEC might diminish their efforts to prosecute corruption and related offences.

More importantly, it is unusual to observe that the enforcement activities from different jurisdictions such as Brazil, Canada, China, the Netherlands, Norway, Oman and the United Kingdom have occurred. Unfortunately, Turkey is not one of those countries that demonstrate the determination regarding enforcement activities. But there is one fact that the FCPA is significantly impacting enforcement activities all over the world.

What is the FCPA?

The Foreign Corrupt Practices Act (FCPA) is a critically important statute for combating corruption around the globe.

The FCPA contains both anti-bribery and accounting provisions:

- a) The anti-bribery provisions prohibit U.S. persons and businesses (domestic concerns), U.S. and foreign public companies listed on stock exchanges in the United States or which are required to file periodic reports with the SEC, and certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business.

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b) The accounting provisions require companies to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls. An effective compliance program is a critical component of a company's internal control systems.

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GOOD RECIPE FOR CORPORATE FAILURES: EFFECTIVE INTERNAL CONTROLS

There is overwhelming evidence that generally the root causes of corporate governance failures are breakdowns of internal control system. Good lessons from bad examples show that effective internal controls are key elements of corporate governance and crucial to sustaining an organization.

Changing stakeholders' behavior

Internal controls are essential to the effective operation of companies. Simply put, internal controls are activities or procedures designed to provide reasonable assurance that operations are “going according to plan.” Without adequate internal controls, management has little assurance that its goals and objectives will be achieved. Properly designed and functioning controls reduce the likelihood that significant errors or fraud will occur

and remain undetected. Internal controls also help ensure that departments (other than the main finance office) are performing as expected.

Over the past few decades, business and operating environments have changed dramatically, becoming increasingly complex, technologically driven, and global. At the same time, stakeholders are more engaged into the business, seeking more transparency and

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← The FCPA's top ten cases *

The top ten cases involved financial penalties of \$4.4 billion, or an average of \$440 million. Here are the current top ten FCPA enforcement actions of all time:

	Company	Country	Penalty Amount (millionUSD)	Year
1	Siemens	Germany	800	2008
2	Alstom	France	772	2014
3	KBR / Halliburton	USA	579	2009
4	BAE	UK	400	2010
5	Total SA	France	398	2013
6	Alcoa (U.S.)	U.S.A	384	2014
7	Snamprogetti Netherlands B.V./ ENI S.p.A.	Holland/Italy	365	2010
8	Technip SA	France	338	2010
9	JGC Corporation	Japan	219	2011

It is interesting to see that eight companies in the top ten are non-U.S. firms although the penalties were imposed by U.S. regulators due to the FCPA.

Size does not matter: Wake-up call for small and medium-sized companies

While settlements with large size companies such as Alstom, Alcoa, and Avon were the headline grabbers in 2014, the year also brought a number of enforcement actions against small and medium-sized companies. For example in July 2014, firearms manufacturer Smith & Wesson Holding Corporation agreed to a settlement with the SEC for \$2 million. Another example is that two

former employees of defense contractor FLIR Systems agreed to pay the SEC fines of \$50,000 and \$20,000, respectively, to settle the FCPA charges arising out of the alleged provision of gifts, travel, and entertainment to Saudi officials for a “world tour.”

In summary, it is unavoidable fact that small and medium-sized businesses that want to enter into high-risk markets and expand their international sales must be careful.

The FCPA is a criminal statute where there is no concept of materiality. Companies have been prosecuted for vary small bribes and for inaccurate books and records or failures to set up systems of controls - which arguably have no monetary value. Criminal activity by your employees that impacts your company should always be seen as material.

Where Turkey stands in the FCPA enforcements?

Although Turkish regulators’ low level of enforcement, the U.S. regulators’ enforcements caused to name Turkey in various criminal and regulatory investigations such as Smith & Wesson, Tyco, Daimler, Siemens, Delta & Pine Land, Micrus.

What is the OECD approach on anti-corruption and impact on Turkey?

The Organisation for Economic Co-operation and Development (“OECD”) has recently taken several steps aimed at increasing the anti-corruption enforcement efforts of member countries and signatories to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”). The latest report of OECD dated 17 October 2014 states that OECD is “seriously concerned about Turkey’s low level of enforcement” in its “efforts to enhance its foreign bribery legislation” - including specifically the absence of any foreign bribery convictions in the eleven years since Turkey ratified the

treaty. Turkey is specifically criticized for claiming to be unaware of certain bribery allegations even though “these were publicized in both Turkish and foreign news.”

Sweeping impact of international enforcement efforts

We are seeing more and more anti-corruption conferences being held across the globe in which international enforcement efforts, whether undertaken pursuant to the FCPA, OECD or local law, are being discussed and highlighted. The UN and the World Bank also are intensifying their anti-corruption efforts. Most interestingly, regulators from different countries are beginning to coordinate their efforts.

While U.S. prosecutors have indeed sent strong messages to U.S. executives through enforcement actions, they are also sending similar messages to their counterparts outside the US. This is so clear in the aforementioned top ten list where eight companies are non-U.S. firms. Do you think this is a coincidence? It appears that this is a question particularly executives working for non-U.S. companies can answer best. In the meantime, while understanding what is going on related to anti-corruption regulations, we strongly recommend that company executives start their journey to as-

sess their company’s anti-corruption risks, take actions to reduce these risks and have ongoing review on the related controls.

Fikret Sebilcioğlu, CPA, CFE

Turkish experience: FCPA Tyco case

M/A-COM Inc. (“M/A-COM”) was an indirect, wholly owned subsidiary of Tyco headquartered in Massachusetts and incorporated in Florida. Between 2001 and 2006, M/A-COM engaged a New York City-based sales agent to sell radio frequency microwave receivers and related equipment to government entities in Turkey. The sales representative sold the equipment at a mark-up, and he also received a commission in connection with one of his sales, which he provided in part to a Turkish government official to obtain further orders. According to the SEC Complaint, M/A-COM employees knew that the sales agent was making improper payments to Turkish government officials, and it cites one email in which an employee stated, “Hell, everyone knows you have to bribe somebody to do business in Turkey.”

GOOD RECIPE FOR CORPORATE FAILURES: EFFECTIVE INTERNAL CONTROLS

← accountability for the integrity of systems of internal control that support business decisions and governance of the organization. Stakeholders’ behavior is understandable because many corporate governance failures stemmed from lack of properly designed and effectively functioning controls.

Many companies have internal control systems in place for many years in different forms. However, recently the various stakeholders have come to expect much more when it comes to internal controls and the way they are monitored. In addition to external stakeholders, who see effective internal control systems as an integral part of good corporate governance, a company’s board of directors and senior executives need transparent and reliable information on the effectiveness of internal controls. In addition, more and more companies are realizing that taking a good look at their internal processes and controls is a great opportunity to make their internal organization more efficient.

Lessons learned from the collapses

We have seen the damaging effects of many large and small-scale governance and internal control collapses. These breakdowns have taught valuable lessons around a number of themes such as ineffective board oversight, the effects of management override, conflicts of interest, lack of segregation of duties, lack of delegation of authorities, poor or non-existent transparency, siloed risk management and unbalanced compensation structures.

What should be done to respond to these expectations?

We believe that in order to respond to the stakeholders’ expectations regarding internal controls, you should follow a methodology to ensure that your steps are complete to achieve the best results. We recommend the following 8 steps approach that could be a good roadmap for your company to follow while assessing the design and operational effectiveness of your internal controls:

- 1. Process Documentation:** Documentation of processes should include a process flowchart and, if necessary, should be supported by narrative. It is expected that supporting narrative will be needed for complex processes as a minimum.
- 2. Risks and Controls:** Upon completion of the process documentation, each department needs to identify and document relevant risks for each sub-process within the flowcharts, together with the key and non-key controls that mitigate them. These risks and controls must be formally recorded within a “Risk and Control Matrix”.
- 3. Segregation of Duties:** Management should ensure that significant duties are appropriately segregated.
- 4. Walkthrough:** A walkthrough will confirm the accuracy and completeness of the process documentation and the existence of the controls identified. The walkthrough may be performed and documented by an independent individual of the related cycle to ensure the objectivity.
- 5. Design Effectiveness Assessment:** Once the draft “Risk and Control Matrix” has been prepared and the walkthrough performed, the Design Effectiveness Assessment phase should be finalized confirming that the key controls described in the draft RACM are designed in a manner that mitigate the risks that have been identified.
- 6. Test Plans:** Once the process has been documented, the risks identified and key controls identified and assessed for design effectiveness, the key controls need to be tested for operational effectiveness. The key to this stage is preparing test plans that allow for an efficient and effective testing plan for these key controls.
- 7. Operational Effectiveness Assessment:** Once the test plan has been prepared, the test plan to assess operational effectiveness should be performed. Testing results must be documented properly with appropriate supporting documentation.





8. Deficiency Assessment and Reporting: As a result of testing of operational effectiveness of controls, deficiencies and related remediation should be identified and reported. Of course the management should prepare action plan to remediate deficiencies.

Who is responsible for internal controls? – “Tone at the top”

The responsibilities of board of directors and senior executives for internal controls primarily involve oversight, authorization and ethical leadership

This may come as a surprise to some readers, but external auditors are not responsible for an entity's internal controls. External auditors evaluate internal controls as part of their audit planning process, but they are not responsible for the design and effectiveness of your controls. Board of directors and senior executives are responsible for making sure that the right controls are in place, and that they are performing as intended.

The board and senior executives shape the organization's tone-at-the-top by demonstrating integrity, honesty and ethical behavior in its handling of decisions and sensitive issues. Finance officers and operational managers support the internal control initiatives of the senior executives in daily operations. All levels of management must work together to create an integrated framework that lowers risk to an acceptable level and assists the organization in meeting its goals and objectives.

The attitudes and behavior of board of directors and senior executives are essential to a healthy system of internal control. An internal control environment consists of management's philosophy and operating style. The control environment should also include:

- The organization demonstrates a commitment to integrity and ethical values.
- The board of directors demonstrates independence from

management and exercises oversight of the development and performance of internal control.

- Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.
- The organization demonstrates a commitment to attract, develop and retain competent individuals in alignment with objectives.
- The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.

It is utmost important to recognize that If board of directors and senior executives do not demonstrate strong support for integrity, honesty and ethical behavior, the organization as a whole will be unlikely to practice good internal controls. As the title suggests, if a fish rots from the head down, it would be meaningless to put efforts to design and implement internal controls because they would not function effectively anyway!

Internal controls: Assurance of a safe and profitable business environment

When the subject of internal control is discussed, the conversation frequently centers on costs sides of the efforts rather than the whole consequences of an effective and efficient internal controls. Profitability is not only achieved through high sales and meeting consumer demand, but also managing business risks, controlling costs (including losses due to fraud) and limiting excessive spending. Management should on a regular basis review all aspects of their company and insert internal controls that will strengthen the company's operations and increase profitability. These controls are normally instituted through the formation of policies. Companies use policies to ensure a safe and profitable business environment. These policies are internal controls that help management in areas including human resources, community awareness, and business-to-business relations.

Fikret Sebilcioğlu, CPA, CFE

FIGHTING OCCUPATIONAL FRAUD DURING A POST MERGER & ACQUISITION INTEGRATION

Process of integrating two companies' systems and cultures can be rather challenging. Changes and complex structures associated with a merger or acquisition can be the perfect opportunity for a dishonest employee to commit fraud.

According to the Association of Certified Fraud Examiners (ACFE) 2014 Report to the Nations on Occupational Fraud and Abuse, a typical company loses 5 percent of its annual revenues to employee fraud. Nationally, that translates into about \$750 billion in total annual losses.

However, companies going through a merger or acquisition can be at risk for even greater losses. In times of change, theft, shrinkage and other employee-perpetrated fraud can be a greater temptation.

In general, people are uncomfortable with change. Change can cause uncertainty. Employees often are worried about whether there will be a place for them in the future, and if so, whether they will receive the same remunerations. Furthermore, the process of integrating two companies' systems and cultures can be rather challenging. The changes and complex structures associated with a merger or acquisition can be the perfect opportunity for a dishonest employee to commit fraud.

Common types of occupational fraud we have encountered with clients in the midst of the post M&A integration process have revolved around fictitious vendors or other accounts payable frauds. We have seen employees set up a new vendor in the vendor master file that then begins to bill the company, but this is not a legitimate vendor providing goods or services to the company. Rather, the fictitious vendor is just a tool to allow the unethical employee to steal money from his or her employer. Moreover the employees may also use existing actual vendors to increase the purchasing prices in order to receive kickbacks. These methods are often successful in companies that have not integrated appropriate internal controls and management monitoring systems for vendor and accounts payable management.

To limit your exposure to occupational fraud during the integration phase of an M&A transaction, here are three areas you should pay attention to:

Tone at the top – Management should ensure the company has a strong ethical tone at the top and consistently communicate that tone to all areas of the company. This can be particularly important in situations where the acquired or merged company may not have a strong ethical culture among its employees.

Timeliness of the successful integration of strong internal controls – Internal controls need to be standardized early in the post M&A integration process. If policies and procedures are allowed to differ for extended periods, or segregation of duties is not implemented early on and enforced, the ensuing confusion and inconsistency can create a good climate for employee fraud.

Implementation of a fraud hotline – A merger or acquisition is the perfect time to implement or refresh an ethics and fraud hotline. ACFE research shows that occupational fraud is uncovered by a tip more than 40 percent of the time-more than twice the rate of any other method. Hotlines can turn your employees into your eyes and ears by educating them about ethical and fraud-related issues and giving them a way to anonymously report them. If you already have a hotline, this is the perfect opportunity to reenergize your efforts in this area with some fresh employee training and publicity about the hotline and how to use it.

While anti-fraud controls can effectively reduce the likelihood and potential impact of fraud, the truth is that no entity is immune to this threat. However, we believe that paying attention to these areas during the post M&A integration process can make a huge difference.

Ömer Tunabaş



TEAM WORK DURING A DUE DILIGENCE PROCESS

Coordination between different due diligence teams is proving to be vital for a successful M&A transaction

During a M&A transaction either or both parties may engage different teams to carry out buy side and sell side due diligences under different topics. Such diligences may be centered around the following topics depending on the sector of the target company:

- Financial due diligence
- Legal due diligence
- Tax due diligence
- Fraud compliance due diligence
- Operational due diligence
- IT due diligence

So many different topics and different teams having one single goal that is to identify and analyze issues of importance and risk. The findings of all of these due diligence work have a significant effect on the decision of the parties, the conditions of the deal, the details of the legal documentation and the post acquisition action plan.

Most of these findings regardless of the buy or sell side aspect of the work lead to a common question; what is my exposure and how would this finding economically affect the company or process.

Imagine the exposure of an invalid sales agreement that has been found by the legal due diligence team. The first thing the parties would want to know is the volume of sales made to that customer

under this invalid agreement with all the discounts involved to understand what would happen if this customer was not active after the acquisition. In order to answer this question the financial due diligence team needs to be made aware of this finding.

Or imagine a finding regarding the miscalculation of certain payroll. The financial due diligence team has to be in touch with the tax due diligence team for them to calculate the related tax risk.

Think of another finding by the operational due diligence team such as the premises being too limited in space for the newly anticipated machines to be ordered and installed. They would have to communicate with the financial due diligence team to understand the square meter cost of the existing premises and calculate the cost of the extra space that needs to be rented next to the existing plant.

The coordination between the different due diligence teams is in general undertaken by the advisors of the acquirer or the seller. However, due diligence teams with high awareness for quantifying their findings and good team work capabilities may significantly enhance the success of the transaction. This is the reason why, in Cerebra we allocate time and steps for meetings with the other due diligence teams and analyze their results in the scope of our financial due diligence work.

Ömer Tunabaş



INTERIM MANAGEMENT AND PART-TIME STAFFING

Interim management and part-time staffing is the common need of companies but not considered at first glance

In a tight labour market, you may have a need for quality interim management or part time staffing instead of full time. Serious time constraints, opportunities that exceed the possibilities, meeting culture and increasingly urgent demands by the headquarters or stakeholders have a negative effect on local implementation. Frequent maternity leave, headcount stops, showing delayed recruitment, the luxury of a full pipeline or frequent market introductions may affect the quality of your departments' performance. Other reasons for hiring temporary/part-time staff might be the workload may not support full time staffing - for example you may just need a person to perform the month-end reporting which may be completed in 2-3 days at the end of each month. Or even if you have managed to find the ideal match, or you have not yet identified the optimal choice, a vacancy could be open for many months – sometimes up to a year.

Processing time may become luxury and you can never escape from working during leisure time or travel. Who is going to do the work, and who will guarantee quality? Not exercising your carefully developed and budgeted projects is the single most important and most expensive cause of not realising your business goals. Qualified finance professionals are hard to get, and today's career flexibility is not really going to improve this situation.

Defined as a resource to help organizations undergoing change, trying to implement a critical strategy or looking to plug a crucial management or skills gap, organizations use interims/part time staff for:

- Change management
- Crisis management/troubleshooting
- Heavy workload and inability to increase headcount
- Maternity cover
- Long-term sick leave
- Sudden departure in the team

The contracts are mostly made over a month in length. Some assignments continue on a rolling basis for much longer, although most are between six and 12 months in length. Most of the companies expect the interim professionals to be based in their office for the majority of the contract period, however there is usually flexibility for some outsourcing.

The companies seek interim professionals for three primary reasons: exceptional service; consistent, high quality consultants; and fast, effective solutions that meet or exceed their expectations.

There are service providers offering veteran controllers or accountants support on a part-time, interim, or special project basis (e.g. monthly reporting to headquarters, restructurings, accounting system integration). The companies benefit from getting exactly the right level of professional experience and impact—when they need it and at just the right weekly time commitment (e.g. couple of hours per month to 1 – 3 days per week).

You may need interim/part-time controllers and accountants to manage the following functions at your company:

Financial Reporting

- Accurate and timely monthly financial reporting including



the preparation of the Group Reporting Package in accordance with the Group Accounting Principles, IFRS, US GAAP, etc.

- Accurate and timely regulatory reporting in accordance with the Turkish Commercial Code

Finance/Accounting Oversight

- Cash flow forecast
- Oversight and training of existing and new company accounting personnel
- Management of payments
- Oversight of administrative areas such as purchasing, invoicing, and personnel

Systems & Processes

- Implementing stronger internal controls and systems to ensure disciplined monthly closing cycles
- Transitioning to new accounting software

Bookkeeping and Tax Compliance

- Preparation of journal vouchers and inputting all accounting entries into the accounting system in accordance with the Turkish Uniform Chart of Accounts (Turkish GAAP)
- Performance of the quarterly and annual closing and preparation of general ledger, trial balance, balance sheets and profit

and loss statement in Turkish Lira in compliance with Turkish Commercial Code and Tax Regulations

- Preparation of the quarterly withholding tax returns, monthly value added tax and stamp tax returns, quarterly prepaid tax returns and annual corporation tax returns and the annual statutory financial statements that form part of the tax return and submitting the tax returns to the Tax office
- Preparing monthly B forms and submitting the tax returns to the Tax office
- Preparing and submitting yearly forms of the Undersecretariat of Turkish Treasury
- Preparation of the quarterly statutory financial statements and tax package in English

The right interim/part-time staff

Interim/part time staff are not necessarily only there to overcome crises or organisational change. You may need a person who understands your business, your problem and complies with your solutions, someone who can take up the work immediately, with broad professional experience. The right kind of interim/part time staff is an experienced, highly qualified professional who is available at short notice and can immediately set to work without a learning curve. A true interim/part-time staff is more than a freelancer. He or she has a proven track record, good networking skills and is able to quickly adapt to new situations.

We, as Cerebra, can take up from top to mid-level managerial projects and help you to realise your business goals. From a few weeks to longer periods, or even many years, we can provide professional interim or part-time services.

Seda Bayraktar, CPA



About Cerebra

Cerebra founded in 2009, is a full service accounting, audit and advisory firm based in Turkey. In Cerebra we are a team of professionals led by top management with extensive "big four" background. Our clients and working partners in general are multinational firms, funds and other entities based especially in Western Europe, Scandinavia and USA as well as firms, funds, law firms and investment banks established in Turkey.

Our aim is to mix our past experience with the track record of Cerebra to provide services to clients that require the attention and hands on approach of boutique service providers. We are very keen on implementing the corporate policies and infrastructure of the best practices of the industry to our services without losing the flexibility and human

touch that our clients require and appreciate.

Our professionals provide the following services to its international and local clients;

- Accounting Compliance and Reporting
- Independent Audit
- Internal Control Systems and Internal Audit
- Fraud Investigations
- Buy Side Financial Due Diligence
- Sell Side Financial Due Diligence and Vendor Assistance
- Company Valuations



Fikret Sebilcioğlu
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Worked with PwC Turkey and the Netherlands for 15 years. Became the founding partner of Cerebra in 2009. Has a wide range of experience in independent audit, fraud investigations, consolidation, internal audit, internal controls, IFRS, US GAAP. Certified Public Accountant and Certified Fraud Examiner. Board member of Corporate Governance Association of Turkey (TKYD).



Ömer Tunabaş
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Worked with PwC Turkey and Alfa Securities for 6 years as an auditor and corporate finance consultant. Continued his career as an internal financial and business development consultant in Koç Holding for 10 years. Became a partner of Cerebra in 2010. Has a wide range of experience in independent audit, buy and sell side financial due diligence, M&A advisory, company valuation, budgeting and strategic planning.



Seda Bayraktar
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Worked total of 8 years in BDO and PwC. Continued her career as a CFO in Clear Channel Turkey before joining Cerebra in 2009 as the Head of Accounting Compliance and Reporting. Has a wide range of experience in independent audit, accounting and finance management, internal controls, IFRS and US GAAP.