

FCPA:

(Foreign Corrupt Practices Act)

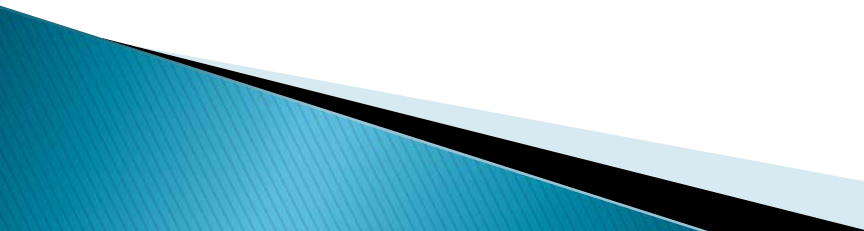
Regulatory Update and Advanced Tools for Compliance

Brian Mitchell Warshawsky, UCOP

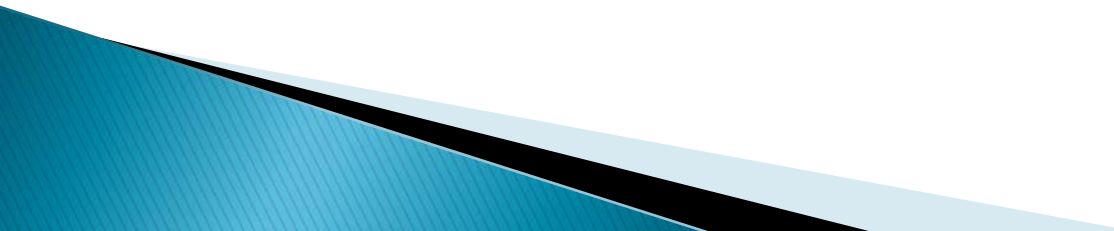


Case Study:

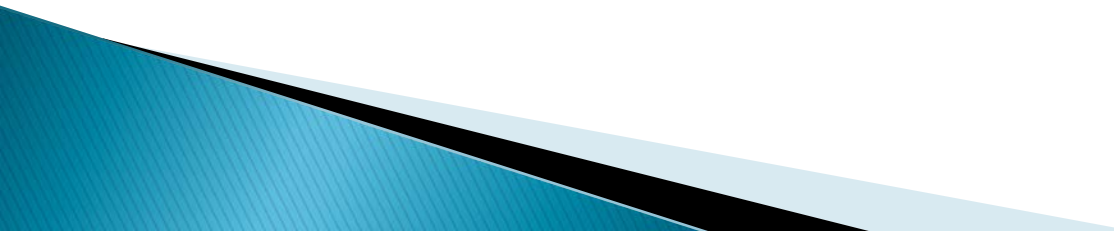
The overseas shipment delayed in customs

- ▶ Professor Smith is leading a global health program in a poor overseas country.
 - ▶ Medical supplies from the U.S., which are crucial to this program are delayed in local customs.
 - ▶ The local customs agent strongly suggest paying him and his colleagues a “helper” fee will help free the supplies.
 - ▶ Such payments are local custom.
 - ▶ What are your concerns?
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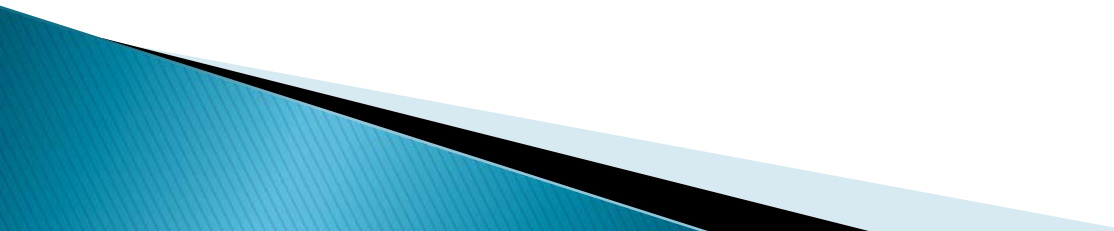
Permits

- ▶ Professor Smith next learns that all members of her team must obtain work permits from the local overseas government where the global health program is based.
 - ▶ All the logistical planning is complete but Professor Smith is concerned about any additional delay.
 - ▶ A clerk in the office issuing the permits can guarantee expeditious review for a fee. A week later, a new delay occurs as government red tape requires even more fees which the clerk promises will move the permit applications back to the expedite pile.
 - ▶ Any concerns?
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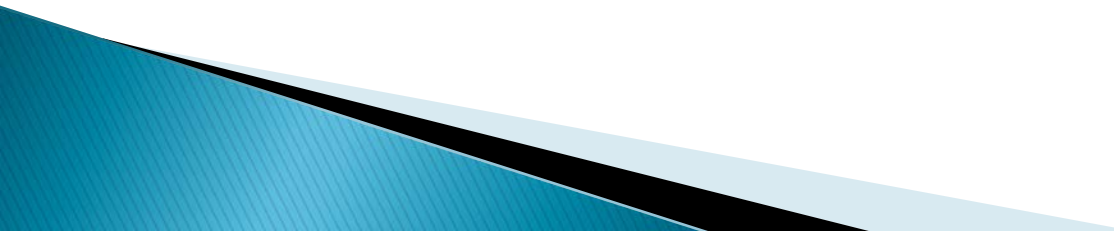
3rd Parties

- ▶ Distribution of the healthcare services will include life saving drugs will rely on third parties that operate locally in country. This includes transportation services as well as local agents and contractors.
 - ▶ What risks should you address at the outset?
 - ▶ What about documentation of decisions made?
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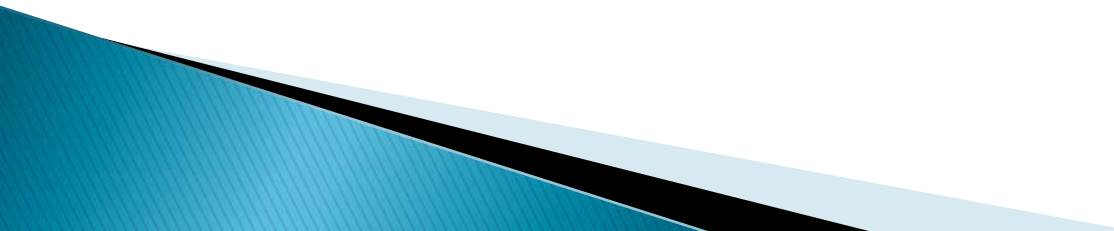
New Trend: Sponsor Demands

- ▶ Sponsors are increasingly demanding FCPA and UKBA (UK Bribery Act) terms in agreements
 - ▶ What does this mean for research universities?
 - ▶ Can you just agree to comply and forget about it?
 - ▶ What is your strategy?
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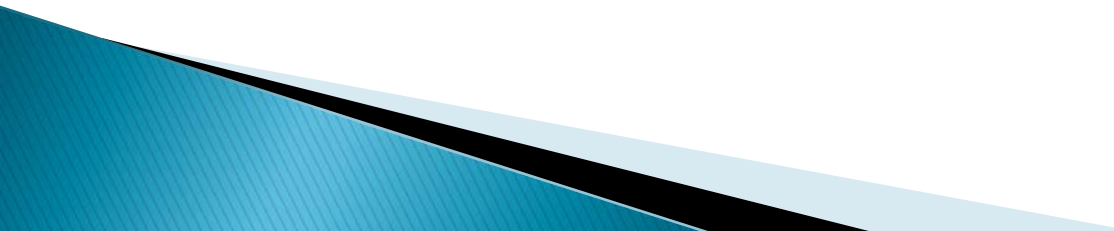
How well do you know your overseas partners?

- ▶ How well do you know your overseas agents and subawardees?
 - ▶ What is your liability for their actions as 3rd parties acting on your behalf?
 - ▶ Hosting foreign delegations
 - ▶ How do you demonstrate compliance?
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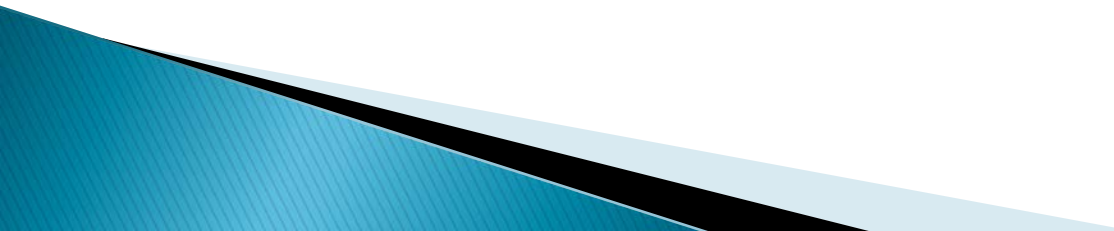
Risks of 3rd parties

- ▶ Local agents and experts often engaged overseas
 - ▶ Foreign collaborators and their personnel
 - ▶ Logistics
 - ▶ Subcontractors
 - ▶ Consortia/Teaming agreements
 - ▶ Industry partners and THEIR agents
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Recap: Foreign Corrupt Practices Act

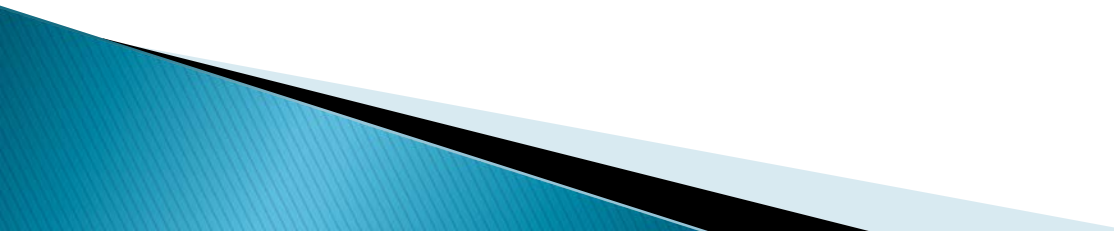
- ▶ Passed in 1977, the FCPA contains two main provisions relating to bribery of foreign officials and accounting transparency requirements
 - ▶ Since the collapse of Enron in 2001, the U.S. government has dramatically stepped up its enforcement of corruption cases.
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What is a bribe?

- ▶ “Corruptly offering or paying a thing of value to a foreign government official directly, or indirectly, with knowledge and for the purpose of influencing an official act or omission, or securing an improper advantage to obtain or retain business.”
 - ▶ 1977 U.S. Foreign Corrupt Practices Act
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Why Now?

New developments – Year in Review

- ▶ FIFA scandal
 - ▶ GM Starter investigation
 - ▶ DOJ Criticized – shades of 2008
 - ▶ Sally Yates Memo September 9, 2015
 - 6 Principles
 - Renewed focus on individuals
 - ▶ New DOJ Compliance Program counsel
 - ▶ Caldwell Speech – 3 elements
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Regulations

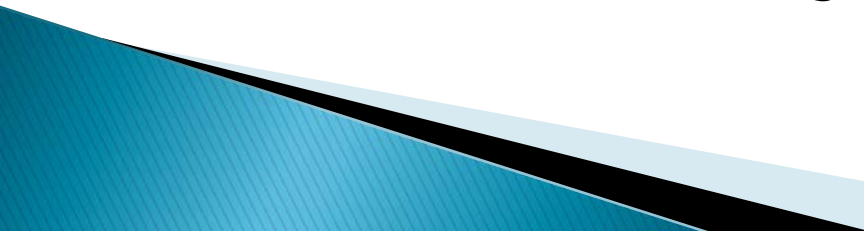
U.S. Foreign Corrupt Practices Act (“FCPA”) and the United Kingdom Bribery Act (“UKBA”).

- ▶ In addition, many countries and jurisdictions have also instituted their own Anti-Corruption Laws.
- ▶ You should become knowledgeable about any local Anti-Corruption Laws before engaging in activity with individuals or entities outside the United States

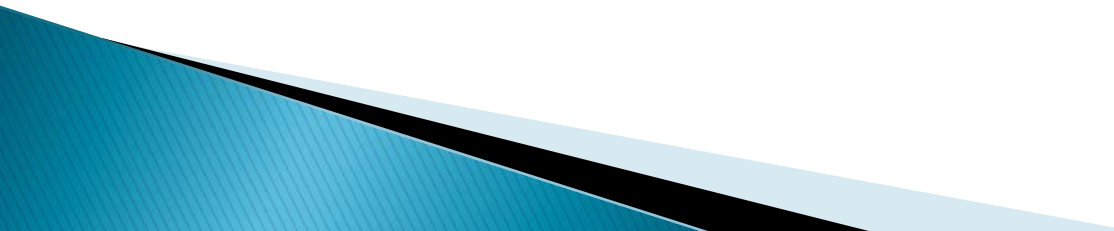
“Instrumentality”

- ▶ The FCPA prohibits the bribery of “any foreign official,” defined as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof.”
- ▶ On May 16, 2014, *US v. Esquenazi*, the Eleventh Circuit affirmed a broad **definition** of “**instrumentality**” of a foreign government, as the term is used in the **Foreign Corrupt Practices Act (FCPA)** to **define** who qualifies as a “foreign official” under the statute

Instrumentality II

- ▶ Broad two-pronged test
 - Government Control
 - Whether the entity performs a function the government treats as its own
 - ▶ A professor or other employee of a state-run university could be considered a “foreign official” for purposes of the FCPA.
 - ▶ Doctors serving as employees of government owned or operated medical facilities (clinics, hospitals, etc.)
 - ▶ Airport employees and local customs officials at country borders or ingress points (such as train stations and airports)
 - ▶ Public transit employees
 - ▶ Public dignitaries
 - ▶ Police officers or investigative bureau agents
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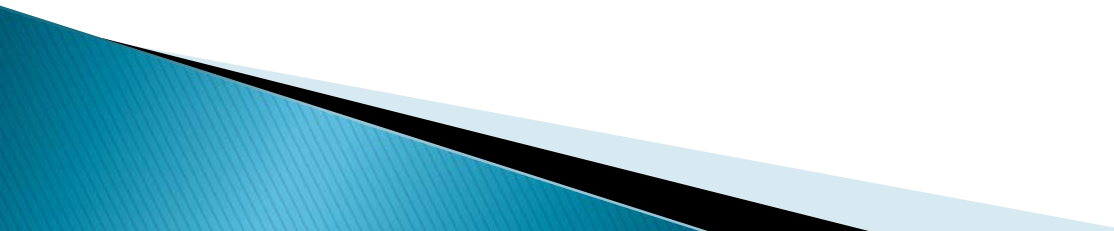
PEP's

- ▶ A politically exposed person does not always mean an individual who directly holds public office, it also includes their immediate family members, close business associates, as well as any senior executives of state owned enterprises.
 - ▶ The new FATF recommendation expanded the definition to include individuals of high status in International Sports Committees.
- 


PEP's II

- ▶ The term "**politically exposed person**" generally includes a current or former senior foreign political figure, their immediate family, and their close associates.
- ▶ A "**senior foreign political figure**" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a senior foreign political figure includes any corporation, business, or other entity that has been formed by, or for the benefit of, a senior foreign political figure.
- ▶ The "**immediate family**" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children, and in-laws.
- ▶ A "**close associate**" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

Gifts.... Or Bribes?

- ▶ The FCPA applies to any and all “things of value,” including gifts.
 - ▶ There are some exceptions to the general prohibition, however.
 - ▶ Faculty and Staff members should consult with local experts prior to giving any gifts to foreign colleagues at state-run universities overseas or even when hosting visits on campus.
 - ▶ No de minimis exception
- 

Prior to international engagements...

- ▶ Have we performed Due Diligence?
 - ▶ Are we Liable for improper benefits paid by intermediaries acting on our behalf?
 - ▶ Overseas payments OK?
 - Political donation
 - Gifts
 - Preferential treatment
 - Entertainment
 - ▶ What due diligence must be performed before a third party may be paid?
 - ▶ Issues with money?
 - ▶ What records must be maintained?
 - ▶ Countries of higher risk?
- 

Required Due diligence

A. Identify Politically Exposed Persons

- ▶ Due diligence relative to both collaborators and transaction data is a requirement of the FCPA and particular care must be taken with Politically Exposed Persons (“PEPs”). By nature, these individuals tend to be in positions of power and are vulnerable to corruption related activity.

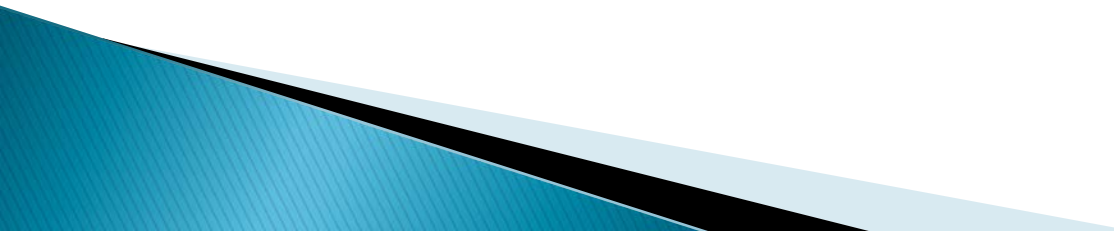
B. Countries known for corrupt business practices

- ▶ Certain countries are known for relatively corrupt business practices. An institution must consider the risk in doing business in these jurisdictions.

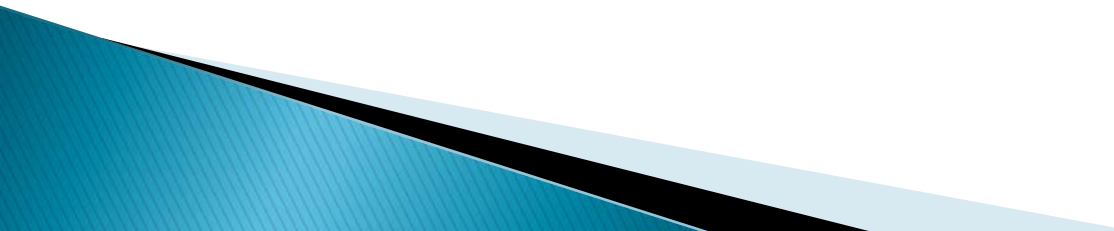
C. Third Party Payments

- ▶ Corrupt payments by agents, consultants, and other third parties represent one of the highest risk areas under the FCPA. American organizations are vulnerable to the improper payments on their behalf by third parties.

***Tools to
comply?***



Solutions and Tools

- ▶ World-Check One (Thomson Reuters)
 - ▶ ECAS Pilot Program - testing
 - ▶ This vendor developed our interactive training program
- 

World-Check One

THOMSON REUTERS BrianWarshawsky001

WORLD-CHECK ONE Screening

▸ Regents of the University of California (T)

MODE

Single

Batch

ENTITY TYPE

Individual

Organisation

Vessel

Unspecified

CHECK TYPES

World-Check

Passport-Check

Name * ⓘ

Case ID ⓘ

Gender Male Female Unspecified

Date Of Birth

Country of Residence

Place of Birth

Nationality

PASSPORT-CHECK

Given Name *

Last Name *

Gender Male Female Unspecified *

Issuing State *

Nationality *

Date Of Birth *

Document Type Passport ID-Card Type 1 (3 lines) ID-Card Type 2 (2 lines) *

Identification Number *

Date of Expiry *

Screen Save

World-Check One

- ▶ Deeper Dive into individuals and organizations
- ▶ Thousands of At Risk profiles that aren't found on any list.
- ▶ Focus may include Risk Mitigation programs, Anti Money Laundering, Bank Secrecy Act, FCPA, Know Your Customer, Vendor Onboarding
- ▶ In 2014 World-Check's Global Research Team conducted over 400,000 hours of research on current, new and potential profiles, more than 16,000 days and almost 50 years of research.

World-Check One Batch Screening

The screenshot shows the Thomson Reuters World-Check One Batch Screening interface. The top navigation bar includes the Thomson Reuters logo, a search bar, and the user name "BrianWarshawsky001". The main interface is divided into three sections:

- Left Panel:** Contains a breadcrumb "Regents of the University of California (T)" and a sidebar menu with "MODE" (Single, Batch) and "CHECK TYPES" (World-Check, Passport-Check).
- Center Panel:** Titled "BATCH SCREENING", it includes a "Batch Name" dropdown menu, a "Screening Type" section with radio buttons for "Screen" (selected) and "Screen and OGS", and a "Batch File" section with a text input, "Browse", and "Upload" buttons.
- Bottom Panel:** Features a "Run Batch Screening" button.

Important: Please review the batch upload guidelines and file format before screening.

Assets owned

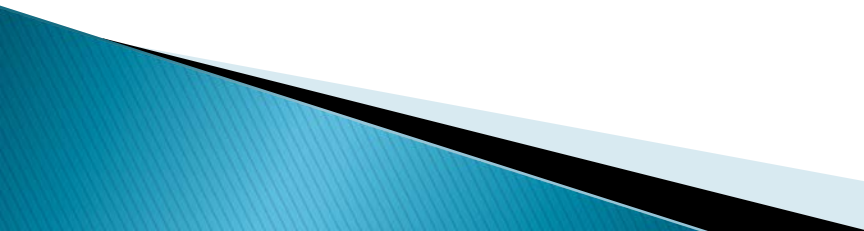
The screenshot displays the Thomson Reuters World-Check One interface. At the top, the Thomson Reuters logo and a search bar are visible, along with the user name "BrianAllenBower". The main header shows "WORLD-CHECK ONE" and a "Case" dropdown menu. Below this, a navigation bar indicates "Matching World-Check Profile" with a count of 7 of 25.

The main content area is divided into several sections:

- Submitted Data:** A table with columns for Name, Submitted Data, and Matched Data. The entry for "SIB Limited" is highlighted, with a checkmark in the Submitted Data column and "SIB (CYPRUS) LIMITED" in the Matched Data column.
- Matched Data:** A table with columns for Name, Submitted Data, and Matched Data. The entry for "SIB (CYPRUS) LIMITED" is highlighted, with a checkmark in the Submitted Data column and "SIB (CYPRUS) LIMITED" in the Matched Data column.
- CONNECTIONS / RELATIONSHIPS:** A section with a "World-Check ID: 1846541". It contains two tables:
 - Linked Companies:** A table with columns for Linked Companies, Connection, and Category. The entry for "SBERBANK OF RUSSIA" is highlighted, with "Affiliated Company" in the Connection column and "BANK" in the Category column.
 - Linked Individuals:** A table with columns for Linked Individuals, Connection, and Category.

On the left side, there is a sidebar with a "SIB Limited" profile card. The card shows the Case ID "62b8df1a-371a-4ccd-9520...", Status "UNARCHIVED", and a "More" link. Below the profile card are sections for "User Activity" (0), "Summary", "World-Check" (with a red indicator), and "Audit". A vertical menu on the left lists "Key Data", "Biography", "Aliases", "Keywords", "Connections / Relationships" (highlighted), and "Sources".

Differences with existing tools

- ▶ Screening results differ from Visual Compliance.
 - ▶ World-Check One pulls from lists not limited to government no-go lists
 - ▶ For example: someone under indictment as verified by public records may pop up.
 - ▶ “May” be helpful in selecting international collaborators and 3rd parties not Denied or Debarred yet present a viable risk
- 

Unique tools

- ▶ Batch Uploading/ Batch Screening – (available as a separate fee from Visual Compliance)
- ▶ On-going monitoring (like Dynamic Screening)
- ▶ Passport check
- ▶ Group administrators may customized types of screening for various purposes
- ▶ Company affiliation information: Currently provides companies associated with individuals – such as for Russian Sectoral Sanctions if a Russian on the list owns/controls more than 50% of a company, this is an issue.
- ▶ Coming soon mid year: Spider Graphs of individuals relations to companies
- ▶ Media checks on people (seems a bit like Google)
- ▶ “API” is coming... this is a software connection tool that allows our own internal ERP/Systems to link to T/R for integrated screening – extra cost would be involved however.

Other Tools

Worldcue®Planner



This site is sponsored by the
Office of the President,
Department of Risk Services,
University of California.

Welcome Location Intel Global Travel Tips Tools Help

Welcome

Welcome to Worldcue® PLANNER

Know-Before-You-Go Travel Intelligence®

Quick Tips for Getting Started

- ▶ Click the *Location Intel* tab to begin your search
- ▶ Choose a location or airport code
- ▶ Click **Go**



- This tool allows you to plan your trip and mitigate potential travel risks before traveling

Intro to Foreign Corrupt Practices Act (FCPA)

UNIVERSITY OF CALIFORNIA

FOREIGN CORRUPT PRACTICES ACT (FCPA) AND ANTI-CORRUPTION

MAIN MENU

You can return here from any point in the course by clicking the home button at the bottom of the screen. Use the arrows at the bottom of the screen to navigate through the course.

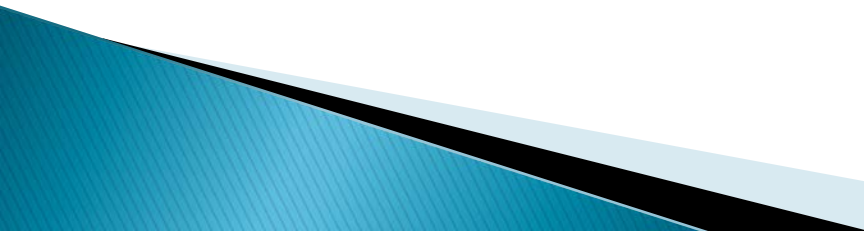
- INTRODUCTION
- BACKGROUND
- UNDERSTANDING THE LAW
- RISKS AND CONTROLS
- CASE STUDIES
- CONCLUSION
- TEST YOUR UNDERSTANDING

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THOMSON REUTERS

An illustration of a red credit card with the number 4321 9876 5012 and the name ROJE CARDHOLDER NAME. Next to it are several stacks of gold coins. The background shows a pink checkbook with a check and a lock icon.

Course Learning Objectives

- ▶ Understand the definitions of bribery and corruption
 - ▶ Be aware of the damage caused by bribery and corruption
 - ▶ Be familiar with the key provisions of the FCPA
 - ▶ Be able to identify "Red Flags" that may indicate illegal payments or other corrupt activity
 - ▶ Provide an official record of completion
- 

UNDERSTANDING THE LAW



QUESTIONS

Click on each of these questions to learn more about the Foreign Corrupt Practices Act.

WHO IS A FOREIGN OFFICIAL?
IS ONLY CASH COVERED?
WHAT IF THE BRIBE WAS MADE INDIRECTLY?



BACKGROUND



TRUST AND REPUTATION

Trust is the most important driver of reputation. It is fundamental to the survival of any organization.

Bribery and corruption destroy trust and damage social and economic development.

The University of California is committed to making a positive difference that benefits our organization and the communities in which we operate.

We therefore have a **zero tolerance** approach to bribery and corruption.



DID YOU KNOW?

According to the 2010 Global Corruption Barometer, one in four people report having paid a bribe in the last year.









Agent red flags

RISKS AND CONTROLS



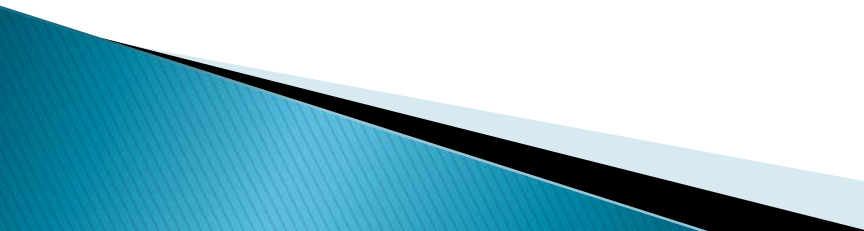
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RED FLAGS INCLUDE INSTANCES WHEN THE AGENT:

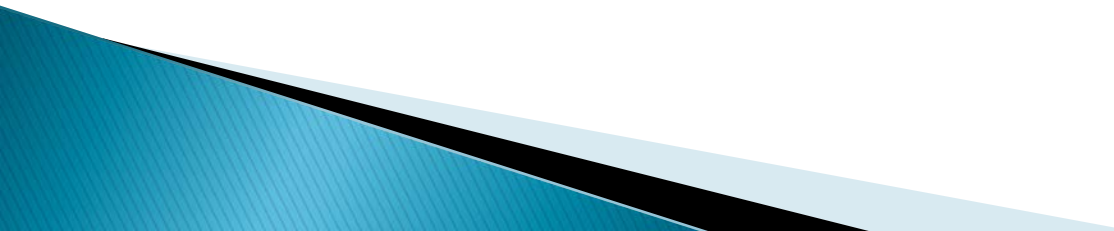
-  Has a reputation for getting things done when no one else can
-  Is recommended by officials in a decision-making position
-  Requests payments of expenses in advance
-  Lacks relevant experience in the activity for which retained
-  Is vague or evasive in explaining how he accomplished a particular task
-  Charges a fee that seems unusually large or disproportionate to the tasks undertaken



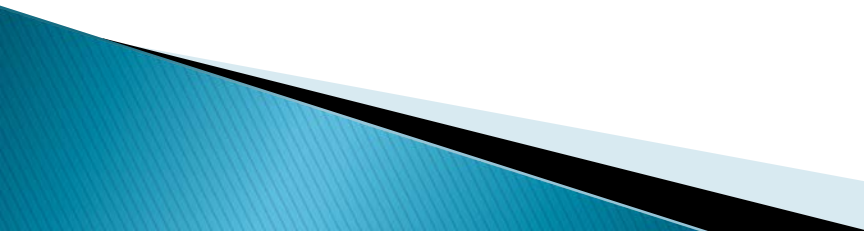
Steps toward compliance

- ▶ Regulatory review
 - ▶ Identify Politically Exposed Persons (PEPs)
 - ▶ Identify Instrumentalities of a foreign government
 - ▶ Pre-travel planning and mitigation
 - ▶ Roles of 3rd parties
 - ▶ Training including the new online eLearning tool
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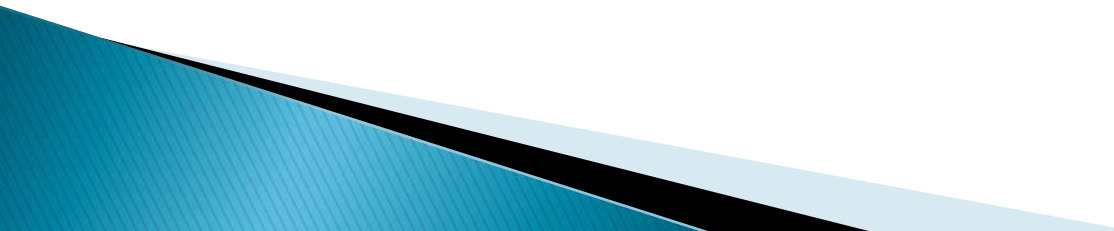
International Compliance Review Steps

- Guidance procedures and best practices
 - Required documentation for approval and recordkeeping
 - Restricted party screening – know your PEP's and all other affiliates / 3rd parties.
 - Vetting and approval of agreements
 - Consultation with Subject Matter Experts (e.g. Export Control Officer, Risk Services)
- 

Questionable payments?

- ▶ Does it comply with the University's policies?
 - ▶ Would it be considered excessive, inappropriate, or a misuse of funds?
 - ▶ What is its purpose?
 - ▶ Does it demonstrate good judgment?
 - ▶ Could it damage the University's reputation?
- 

What level of documentation?

- ▶ You should keep copies of all contracts and internal and external approvals relating to any dealings with other parties overseas.
 - ▶ Consult with your local compliance personnel as to the appropriate level of due diligence in light of the contemplated activities.
- 

Campus Export Control Contacts

- LBNL Scott Fong shfong@lbl.gov
- UCB Scott Fong shfong@berkeleu.edu
- UCD Craig Allison ccallison@ucdavis.edu
- UCI Marci Copeland marci.copeland@rgs.uci.edu
- UCLA: Claudia Modlin cmodlin@research.ucla.edu
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- UCSC Caitlin Deck cddeck@ucsc.edu
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- UCSD Brittany Whiting brwhiting@ucsd.edu
- UCSF Joanie Doherty joan.doherty@ucsf.edu _or
Elaine Cooperstein Elaine.Cooperstein@ucsf.edu

Campus and Medical Center Risk Management Contacts

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Questions?

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