Anti-corruption due diligence should be part of any M&A deal

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As noted in a recent White Collar and Government Compliance client alert and today's Corporate Counsel, due diligence in the context of a merger or acquisition will win points with regulators in both the United States, home of the Foreign Corrupt Practices Act ("FCPA"), and in the UK, which has its own strict liability Bribery Act that is enforced on companies doing business in the UK. The DOJ's long-anticipated November 2012 guidance on the FCPA titled *A Resource Guide to the Foreign Corrupt Practices Act,* includes FCPA compliance advice in the context of M&A deals:

- Conduct thorough risk-based FCPA and anti-corruption due diligence on potential new business acquisitions
- Ensure the acquiring company's code of conduct and compliance policies and procedures regarding FCPA and other anti-corruption laws apply as quickly as is practicable to newly acquired businesses or merged entities
- Train directors, officers, employees and relevant parties of newly acquired/merged entities on the FCPA and other relevant anti-corruption law, as well as the company's code of conduct and compliance policies and procedures
- Conduct an FCPA-specific audit of all newly acquired/merged entities as quickly as practicable
- Disclose any corrupt payments discovered as part of its due diligence of newly acquired/merged entities

Practical tips for buyers also include obtaining anticorruption representations from the target company, which may include providing post-closing recourse in case anticorruption issues are revealed after the transactions is completed. Sellers will want to be proactive in unearthing issues and not discovering anticorruption problems alongside the acquiring company.

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