FOREIGN CORRUPT PRACTICES ACT – Primer and Tool for Audit Committees

History and Background:
The U.S. Foreign Corrupt Practices Act (FCPA) was enacted in 1977 and then revised in 1988. FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining business and mandates that books and records be maintained sufficiently to reasonably assure that no such payments are made. The FCPA requires companies with listed securities in the U.S. to comply with the provisions. FCPA addresses two fundamental areas:

- The anti-bribery provision makes it illegal to make payments with a corrupt motive to foreign officials for the purpose of influencing the official in order to assist in obtaining or retaining business
- The books and records provision requires companies who file reports with the Security and Exchange Commission (SEC) to maintain records that accurately reflect transactions and the nature and quantity of corporate assets and liabilities

For violations of FCPA, publicly held companies can be barred from federal contracts and are subject to civil and criminal penalties. For more information on FCPA, go to http://www.usdoj.gov/criminal/fraud/fcpa/

Why Should Audit Committees Be Concerned?
Money-laundering, anti-corruption efforts, recent scandals and highly publicized cases resulting from the discovery of possible FCPA violations during an acquisition due diligence have brought recent attention to this area. Also, with the enactment of Sarbanes-Oxley Act in July 2002 (also known as the Public Company Accounting Reform and Investor Protection Act of 2002), public companies are mandated to implement an effective internal control system. When CEOs and CFOs comply with the certification requirements of Sarbanes-Oxley, they need to consider the FCPA “recordkeeping” provision and inform the Audit Committee if there are any issues. The Department of Justice and the SEC have stated that companies have a legal obligation to report improper conduct or breakdowns in internal controls relating to the FCPA in their global operations (both U.S. and non-U.S. operations).

The Audit Committee Should Consider Doing the Following:
The Audit Committee should have an awareness of Foreign Corrupt Practices Act (FCPA) provisions to know what the company’s responsibilities are and what an effective compliance program entails.

For more information on the Sarbanes-Oxley Act, go to http://thecaq.aicpa.org/Resources/Sarbanes+Oxley
The Audit Committee should inquire of the CEO and CFO of the company – both at the parent and subsidiary level – about the compliance program they have for FCPA, including a code of conduct and policies that state the intention to comply with FCPA.

Also, the Audit Committee should inquire of the CEO, CFO, Legal Counsel and CAE regarding the company’s plan should a violation occur at the parent or subsidiary level, and the process for disclosure as well as the timing of the disclosure.

The Audit Committee should inquire if Legal Counsel and Internal Audit (Chief Audit Executive) have knowledge of FCPA as well as access to expertise on FCPA issues.

The Audit Committee should inquire of the Chief Audit Executive how FCPA testing is incorporated into an internal audit program and risk assessments.

DISCLAIMER: This publication has not been approved, disapproved or otherwise acted upon by any senior technical committees of, and does not represent an official position of, the American Institute of Certified Public Accountants. It is distributed with the understanding that the contributing authors and editors, and the publisher, are not rendering legal, accounting, or other professional services in this publication. If legal advice or other expert assistance is required, the services of a competent professional should be sought.