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## FCPA UPDATE: THIRD-PARTY RISKS AND ENFORCEMENT ACTIONS

*Recent U.S. government guidance and enforcement activity have emphasized the importance of addressing the corruption risks posed by third-party agents or consultants operating overseas. After discussing the FCPA legal framework and government guidance on third-party management, the authors address recent cases that provide a reminder of the risks, and exemplify the compliance programs and controls that are needed to mitigate them.*

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Third-party agents or consultants can provide critical, and legitimate, services in support of sales overseas. These agents are not *per se* illegal. Yet, these same agents carry inherent corruption risk and are in the view of U.S. enforcement authorities “commonly used to conceal the payment of bribes to foreign officials” in violation of the Foreign Corrupt Practices Act of 1977 (“FCPA”).<sup>1</sup> Additionally, the Organisation for Economic Cooperation and Development (“OECD”), under which 43<sup>2</sup> nations are signatories to the

Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions, has recognized there are “indications that intermediaries are involved in most foreign bribery cases.”<sup>3</sup>

Recent enforcement activity and guidance only further emphasize the risk posed by such agents. This enforcement activity and guidance are best understood in

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comprise 35 OECD member countries and eight non-OECD member countries.

<sup>3</sup> OECD WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS, *TYPOLOGIES ON THE ROLE OF INTERMEDIARIES IN INTERNATIONAL BUSINESS TRANSACTIONS FINAL REPORT ¶ 9* (2009), available at <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/43879503.pdf>.

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<sup>1</sup> U.S. DEP’T OF JUSTICE & U.S. SEC. & EXCH. COMM’N, A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT 60 (2012) [hereinafter FCPA GUIDE], available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>.

<sup>2</sup> Signatories to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions

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