Anti-corruption Act scuppers deals

NEW YORK, US: According to results of Deloitte's annual *Look Before You Leap* survey of corporate executives, investment bankers, private equity executives and hedge fund managers, 63% of respondents reported that the US Foreign Corrupt Practices Act (FCPA) and anti-corruption issues caused their companies to renegotiate or pull out of planned business relationships, mergers or acquisitions over the last three years.

Similarly, 62% of survey respondents pointed to issues related to potential violations of economic and trade sanctions, such as known or suspected dealings with Office of Foreign Assets Control (OFAC) sanctioned entities, as the cause for their companies to renegotiate or pull out of a deal over the past three years. The number of financial services industry respondents reporting economic and trade sanctions issues impacting a deal was higher at 64%.

Further data from the survey revealed that 21% of respondents identified a lack of transparency or unusual payment structures in contracts as reason for renegotiating or terminating deals, while 18% renegotiated or pulled out due to concerns regarding the target's use of agents, consultants, distributors or third parties to obtain or facilitate business.

Crackdowns change the playing field

"Increased governmental crackdowns on corporate corruption and foreign bribery issues are dramatically changing the playing field for potential transactions. As such, companies are either re-evaluating the costs and benefits of these deals, or are outright scuttling those that present unacceptably high risks," said Ed Rial, leader of Deloitte's Foreign Corrupt Practices Act Consulting practice.

The survey also revealed that during the last three years, 61% of survey respondents noted that their companies have pulled out of business transactions as a result of information identified about the target company or its principals during compliance and integrity-related due diligence. Almost two-thirds (60%) of respondents have adjusted deal pricing to reflect compliance and integrity-related issues. Additionally, risk concerns involving integrity and compliance have increased 85% either significantly (41%) or somewhat (44%) over the last three years.

"Respondents placed a great deal of importance on the strength of the integrity and reputation of potential business partners or acquisition targets, as well as the ramifications for their own organisations. In today's environment where word travels quickly, maintaining one's reputation, and engaging in business deals with upstanding organisations, is of utmost importance," stated Wendy Schmidt, leader of Deloitte's business intelligence services practice.

Deloitte's *Look Before You Leap* survey also highlighted issues of particular concern to financial services companies.

Of the 64% of financial industry respondents who identified FCPA and anti-corruption issues that caused their company to renegotiate or pull out of a deal:

- 25% identified lack of transparency or unusual payment structures in contracts compared to the 21% of overall respondents
- 20% cited use of agents, consultants, distributors, or third parties to obtain or facilitate business compared to 18% of overall respondents
- 18% pointed to the extent of an entity's international sales in high-risk countries compared to 13% of overall respondents

Of the 64% of financial industry respondents who identified economic and trade sanction issues that caused their company to renegotiate or pull out of a deal:

- 35% reported weaknesses in due diligence, screening and compliance programs, including quality of data and effectiveness of screening controls compared to 32% of overall respondents
- 21% pointed to operations exposed to high-risk countries with connections to regimes subject to international sanctions (e.g., Burma, Iran, Sudan and Cuba) compared to 17% of overall respondents
- 18% said known or suspected dealing with OFAC-sanctioned entities, Specially Designated Nationals (SDNs) and/or EAR/ITAR Denied Parties/Entities compared to 16% of overall respondents

Financial services firms must be especially alert

"By the very nature of their businesses, financial services firms need to be especially careful when doing business outside of North America. The imposition of economic and trade sanctions by the US in recent years, and much tighter controls over money laundering in numerous countries has made the task of compliance increasingly challenging," said Clint Stinger, a leader in Deloitte's anti-money laundering and economic & trade sanctions practice.

"Over the next few years, it is unlikely that these concerns on the part of the financial industry will diminish, especially as banks, for example, seek new clients in the rapidly expanding emerging markets."

To view the full survey findings, go to www.deloitte.com/us/pr/lookbeforeyouleap2010.

About the survey

Deloitte contracted Forbes Insights to conduct a survey to gain greater insight into the issues of compliance and integrity risks that are increasing as a result of growth opportunities abroad. The survey was conducted online from 11 May-8 June 2010 and was completed by more than 500 respondents from companies in the US, Canada, and Mexico.

Participants represented a wide range of industries, particularly the financial services sector that included private equity firms and hedge funds. In addition, several one-on-one interviews were carried out with senior executives responsible for corporate planning or compliance in order to explore particular concerns in greater detail.