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MANAGING FCPA RISK WHILE FULFILLING LOCAL CONTENT REQUIREMENTS

Fulfilling local content requirements creates risks for FCPA violations in some countries. The authors describe these requirements in three countries and the FCPA risks that the requirements create. They then suggest tailored robust compliance strategies that companies should design for each market to minimize such risks.

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Multi-national corporations frequently grapple with the challenges presented by countries that require local content as a condition of operating within their borders. Generally, local content requirements fall into two categories: (1) rules that require that a national own a percentage of a company operating in certain protected industries and (2) "indigenization" rules that require a company to employ a certain percentage of nationals. Each category creates corruption and compliance risks under both the anti-bribery and accounting provisions of the U.S. Foreign Corrupt Practices Act ("FCPA").[1] As a result, companies should implement and carefully monitor risk mitigation strategies.

EXAMPLES OF LOCAL CONTENT IN NIGERIA, ANGOLA, AND MALAYSIA

Countries require or encourage local content in various forms — including, legislative acts, administrative efforts, presidential decrees, and tendering rules by state-owned entities. With respect to local ownership requirements, countries typically require that foreign company's partner with a local entity or retain a local agent to operate in the country. The rules will often specify the ownership percentage that a local company or individual must hold for a company to operate in certain industries. Indigenization rules typically require that companies seeking to do business in the country employ a certain percentage of nationals, or provide training, or the transfer of technology to nationals in order to do business in the country. Within such frameworks, countries will often define what constitutes a "national" for purposes of the indigenization rule and may specify to which industries the foreign investment restriction applies. Local content rules in Nigeria, Angola, and Malaysia illustrate these variations.

- *Nigeria.* Nigerian local ownership laws address various industries, such as advertising, shipping, engineering, and oil and gas. For the oil and gas industry, the Nigerian Oil and Gas Industry Content Development Act requires 51% ownership by Nigerian nationals for a company to be considered Nigerian.[2] The Act provides first consideration to

[1] 15 U.S.C. §§78dd-1 et seq.

[2] Nigerian Oil and Gas Industry Content Development Act No. (2) § 106 (2010) (Nigeria), https://www.ncdmb.gov.ng/images/GUIDELINES/NCACT.pdf.

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