



Global Compliance Solutions

Five things you need to know about bribery and corruption

With the recent increase in enforcement of the Foreign Corrupt Practices Act (FCPA) and the tightening of anti-corruption legislation in Europe and other regions, knowledge of bribery rules and regulations has never been more critical. In the US alone, the total fines for FCPA violations levied by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) in 2013 exceeded \$720 million¹. Fortunately, effective training and internal communication have been identified as strategies to mitigate your compliance risk. Here are five things you need to know about anti-bribery enforcement trends.

1. This is a widespread, global problem.

A recent study conducted by EY identified that in 40% of the countries surveyed, more than half believe that corruption is widespread. In Egypt, Kenya, and Nigeria, over 80% of people believe that corruption is widespread. The problem of bribery crosses all economies, regardless of geography or size. One in 10 C-suite executives has been asked to pay a bribe and, beyond bribes, one in five CEOs has been asked to act unethically to win or retain business.²

2. U.S. numbers are at all-time highs.

In the past decade, the number of corporate anti-corruption actions initiated by the DOJ and SEC has quadrupled, with 2010 seeing 10 times more actions than 2002. Actions against individuals have tripled from 2002 to 2013².

3. Companies still have many misconceptions that cost them.

Though the FCPA was enacted in the 70s, only recently has enforcement become a top priority for the DOJ and SEC. This has led to some common misconceptions that can significantly increase a company's risk of violations:

- “Large, reputable third parties do not need vetting.” Numerous high-profile cases in recent years have centered around companies' blind reliance on third parties who, unbeknownst to the companies, have engaged in bribery and corruption. Yet the FCPA makes clear that companies are ultimately responsible for the illegal acts committed by third parties on their behalf. These cases show unequivocally that ignorance is no defense and that third-party due diligence is absolutely required.
- “Our anti-bribery policy is good enough.” Not so, say the DOJ and SEC. While a policy is certainly important, it must be augmented by communication, training, monitoring, and auditing, with clear, actionable steps taken in response to potential weaknesses.³
- “We can always rely on the extortion exception.” Although “payment(s) made in response to imminent threats to health and safety do not violate the FCPA,”⁴ the DOJ and SEC take a narrow view when analyzing this exception. If your goods, for example, are being held at customs until you pay a bribe, it does not constitute extortion! A rule of thumb for all forms of economic coercion: if you can safely walk away, it isn't extortion.
- “We're not big enough to be targeted.” The past year has shown that, while large, multinational corporations are the primary target for FCPA enforcement actions, small companies are not out of the line of fire. In fact, smaller companies are arguably more vulnerable to the consequences of FCPA violations as they are more likely to go out of business when faced with large penalties and fines. Remember, there is no materiality threshold for an FCPA violation. Previously, cases have been built from a number of small payments that have accumulated over the years to large amounts.

¹ FCPA Digest: Recent Trends and Patterns in the Enforcement of the Foreign Corrupt Practices Act. Sherman & Sterling, January 6, 2014.

² Overcoming Compliance Fatigue: Reinforcing the commitment to ethical growth by David Stulb. Ernst & Young, May 6, 2014.

4. Violations are extremely costly.

Penalties for violations can easily reach crippling levels for both individuals and corporations. Corporations can face up to \$2 million per violation and under the Alternative Fines Act. This amount can double for a corporation intentionally seeking financial gain from a corrupt payment. These numbers are staggering, yet they do not take into account the loss of revenue due to reputation and brand damage that can result from violations.

		Anti-bribery Violations	Books & Records Reporting Violations
Individuals	Criminal Fine	\$100,000	\$5,000,000
	Prison Sentence	5 years	20 years
	Civil	\$10,000	
Corporations	Criminal	\$2,000,000	\$25,000,000
	Civil	\$10,000	

5. A compliance training program can combat this problem.

According to the U.S. Federal Sentencing Commission, there are seven “hallmarks” of an effective compliance program; these hallmarks can be applied directly to an organization’s anti-bribery framework. If an organization can

demonstrate that it has taken reasonable, proactive steps to embrace these seven hallmarks, it is likely to see reduced penalties and fines if a violation nevertheless occurs.

The Seven Hallmarks of Effective Compliance Programs³

1. Establish standards and procedures to prevent and detect criminal conduct.
2. Provide oversight and accountability in implementation and usage of the program.
3. Exercise due diligence to prevent giving authority to unethical individuals.
4. Ensure that the compliance and ethics program is communicated to all members of the organization.
5. Monitor, audit, and evaluate compliance and ethics programs for effectiveness. Also, provide an anonymous system for reporting misconduct.
6. Provide consistent enforcement and discipline for violations. Reasonable incentives should also be provided to perform in accordance with the program.
7. After misconduct has occurred, the organization shall respond and assess to prevent further, similar misconduct and modify if necessary.

³ 2013 Guidelines Manual – 8B2.1. United States Sentencing Commission, November 1, 2013.

⁴ A Resource Guide to the U.S. Foreign Corrupt Practices Act. The Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, November 14, 2012.



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