Bribery-Act and FCPA compliance

April 2014
Agenda

Introduction

Global economic Crime survey

Corruption Investigation

Adequate procedures
Bribery and corruption risks - threats

- Operations in high risk territories (e.g. as identified per Transparency International’s annual Corruption Perception Index)
- Business that includes large scale projects, tenders or long term contracts
- Significant use of contractors, agents, intermediaries and other third parties who provide services on behalf of the company
- Dealing with government officials and the need for licensing
- Acquiring businesses/entering joint ventures in high risk territories
- Gifts, hospitality, entertainment and travel including per diems and ‘Hosting’ of Government officials
- Facilitation payments particularly around immigration, customs clearance, licences, permits and other Government approvals etc.
- Sponsorships, donations and community / social investment projects
Anti-corruption laws, conventions and initiatives

- US Foreign Corrupt Practices Act 1977
- UK Bribery Act 2010
- Local bribery laws
- OECD Convention on combating bribery of Foreign Public Officials in international business transaction
- United Nations Convention Against Corruption
- World Economic Forum Partnering Against Corruption Initiative (PACI)
- International Chamber of Commerce (ICC) Rules of Conduct to Combat Extortion and Bribery
- The Extractive Industries Transparency Initiative (EITI)
- 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act- whistle blower
# UK Bribery Act Vs. US FCPA

<table>
<thead>
<tr>
<th><strong>FCPA</strong></th>
<th><strong>Bribery Act</strong></th>
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<tbody>
<tr>
<td>Applies to foreign government officials (any official, functionary or employee of non-US government, state-owned enterprise or public international organization)</td>
<td>Applies to private and public functions</td>
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<td>No corporate defense: broadly, company strictly liable for act of employees. An “effective compliance and ethics program” is merely mitigating factor under US sentencing guidelines</td>
<td>Defense exists if have in place “adequate procedures designed to prevent” relevant conduct</td>
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<td>Generally, corporate liability for actions of third parties depend on actual knowledge/awareness of high probability that third party engaging in unlawful conduct</td>
<td>Corporate liability for acts of “associated persons”</td>
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| Defense available for facilitation payments, but increasingly uncertain definition  
  • Small, non-repeated payment made to obtain routine (non discretionary) governmental action  
  • Must be accurately recorded (otherwise “books and records” offence) | Facilitation payments not permitted:                                           |
| Receipt of bribe not covered by FCPA                                   | Receipt of bribe is an offence                                                 |
| There regulatory penalties including fines ceiling                     | Maximum penalty of ten years in prison, with no limit fines                   |

**Facilitation payments**

- Small, non-repeated payment made to obtain routine (non discretionary) governmental action
- Must be accurately recorded (otherwise “books and records” offence)
Global economic Crime survey
כ-30% מאורגניזים הפועלים במגזרו מתפקדו הרבים לשולש שלהן שוחזר במקל פעילות העסקאות בשנותיהם האחתים ואחרים.
Key findings

Emergence of procurement fraud as fifth prevalent type of crime

Systemic economic crimes represent a greater risk than episodic crimes

37% experienced economic crime in the last 24 months

55% of respondents uncovered fraud through internal controls

Cybercrime is not just a technology problem, it is also a business strategy problem

13% relative increase in reported bribery and corruption
Business processes are threatened by economic crime

Economic crime threatens a wide variety of business processes, including:

Selection of Business Processes Threatened by Economic Crime

- Sales (or selling)
- Marketing
- Bidding
- Procurement
- Payments
- Vendor selection
- Distribution
- Logistics
- Access to commodities & resources
- Supply chain operations
- Customer “on-boarding”
- International expansion
- Tax compliance
- Facilities construction, leasing and operations
- Hiring and recruiting
- Suspicious transaction reporting
- IP development and deployment
- Data security and privacy
- IT network operations
- Employee expense reimbursement

Many of these processes take place in cultural and business environments that create tension between equally laudable goals and thus erode the integrity of your employees.
Top five reported frauds

- **Asset Misappropriation**
  - 2014: 69%
  - 2011: 72%

- **Procurement fraud**
  - 2014: 29%

- **Bribery and Corruption**
  - 2014: 27%
  - 2011: 24%

- **Cybercrime**
  - 2014: 24%
  - 2011: 23%

- **Accounting fraud**
  - 2014: 22%
  - 2011: 24%

*Cybercrime emerged as a prevalent crime in the 2011 survey, joining asset misappropriation, bribery and corruption and accounting fraud.*

*Bribery identified as third most prevalent fraud*
Economic crimes that often attract more attention from government enforcement agencies include:

- Bribery and corruption
- Money laundering
- Antitrust/competition law

These crimes have severe impacts to organizations.
**Where are the risks?**

Respondents ranking of highest risks in each region:

- **Africa**: Corruption/Bribery 61%, Money Laundering 25%, Competition Law/Antitrust Law 13%, Don't know 1%
- **North America**: Corruption/Bribery 59%, Money Laundering 18%, Competition Law/Antitrust Law 18%, Don't know 5%
- **Middle East**: Corruption/Bribery 57%, Money Laundering 22%, Competition Law/Antitrust Law 13%, Don't know 7%
- **Asia Pacific**: Corruption/Bribery 56%, Money Laundering 19%, Competition Law/Antitrust Law 20%, Don't know 4%
- **Eastern Europe**: Corruption/Bribery 53%, Money Laundering 17%, Competition Law/Antitrust Law 25%, Don't know 6%
- **Latin America**: Corruption/Bribery 51%, Money Laundering 25%, Competition Law/Antitrust Law 20%, Don't know 5%
- **Western Europe**: Corruption/Bribery 47%, Money Laundering 24%, Competition Law/Antitrust Law 25%, Don't know 4%
- **Global**: Corruption/Bribery 53%, Money Laundering 22%, Competition Law/Antitrust Law 21%, Don't know 4%
Corruption Investigation
Background

A worldwide company - that may have implications under applicable corrupt practices legislation, including but not limited to the US Foreign Corrupt Practices Act. This days the company is conducting an internal investigation under supervision of the Company's General Counsel and oversight of the Company's Audit Committee. The countries in which the alleged violations occurred and as such are part of the investigation were identified as follows: East Europe, Latin America
Objectives

The assessment included:

Examining the potential involvement of senior executives,

Assessing if the investigation’s execution included adequate procedures aimed to expose all relevant cases, territories and staff involvement;

Does the investigation lead to the appropriate conclusions?.

Review of the procedures performed by the company and the anti-corruption remediation program.

The paradox: (investigation instead of prevention)

Once the violations occurred and identified- the cost of the investigation is much higher than the implementation of adequate compliance program;

The brand and reputation are damaged;

Like Siemens- the outcome is that the company invests much more money and management attention in remediation program;

Fine??
How to conduct Anti-Corruption investigation?

1. Data collection + Interviews
2. Imaging
3. E-discovery and Search-terms
4. Analysis and reporting
5. Comparison with local requirements and legislation

Questions to be asked:
1. Could someone delete files?
2. Privacy rules?
3. Independence?
4. Why should I be there at all?
Key Observations and Conclusion

The compliance related budget is much higher- after the damage is done!
60 full-time compliance officers were recruited- as opposed to 11 before the investigation started.

Management and board are concerned with the implementation of compliance program and the related risks within each country of operations!

Each region leader is responsible for the implementation of the compliance program;

How to prevent this “special experience”?

Having a policy in place is only the first step!! (or second...)
Adequate procedures
MOJ Vs ISA Guidance on “adequate procedures” to compliance

**Six key areas of focus:**
- Principle 1: Proportionate procedures
- Principle 2: Top-level commitment
- Principle 3: Risk assessment
- Principle 4: Due diligence
- Principle 5: Communication (including training)
- Principle 6: Monitoring and review

**Seven key areas of focus:**
- Principle 1: Top-level commitment
- Principle 2: risk assessment and suited compliance program
- Principle 3: determine processes and procedures
- Principle 4: Apply program through the entire company
- Principle 5: nomination of compliance officer
- Principle 6: Monitoring and review
- Principle 7: Treatment of failures and violations, and drawing conclusions from them;
Thank you

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