

United States Foreign Corrupt Practices Act And The United Kingdom Bribery Act

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Managing The Risks Of Global Bribery In Business

A number of companies were faced with the need to develop anti-corruption programs before the adoption of appropriate changes in legislation. Subjects of business acting on the international market have long met with the need to comply with the requirements not only of international anti-corruption legislation but also the rules of the game, as defined by the laws of individual states. The most important normative acts in this area are the Foreign Corrupt Practices Act, which came into force in 1977, and the UK Bribery Act of 2010, which entered into force on July 1, 2011.

The Foreign Corrupt Practices Act (FCPA) became the first law prohibiting bribery of foreign officials. The adoption of FCPA in the US was preceded by a series of high-profile investigations into the corrupt practices of companies (Gulf Oil, Northrop, Mobil Oil, Lockheed). The Senate report on the Lockheed scandal noted that giving a bribe corrodes business relations and free enterprise; corruption, influencing the redistribution of resources and directing them not in accordance with the principle of efficiency but, according to corruption schemes, significantly reduces the economic efficiency of the business. In addition to the negative consequences inside the country, it was noted that corruption scandals have a negative external effect. According to Rep. John M. Murphy, who spoke with him about the corruption scandals that preceded the adoption of the FCPA, the consequences of bribery for US foreign policy have, in some cases, become irreversible. As an example, he cited the Lockheed case. On August 16, 1976, former Prime Minister of Japan Tanaka was accused of accepting \$ 1.7 million from Lockheed Corporation. As a consequence, the government of Japan was destabilized, and the credibility of US companies and the US as a whole was undermined.

The FCPA establishes a ban on the bribing of foreign officials, political parties, functionaries or candidates by issuers of securities, local enterprises and certain other designated persons of the United States. At the same time, the definition of a foreign official is widely interpreted and includes individuals who are not necessarily considered public officials in accordance with applicable local law. The requirements and procedures prescribed by the FCPA apply not only to civil servants and persons holding public service positions, as these terms are defined by the current legislation. The law also obliges US issuers to properly maintain accounting and reporting and perform effective accounting and management control. The above act applies primarily to companies and individuals of the United States of America, but the FCPA has an extraterritorial nature.

On July 1, 2011, the Bribery Act, adopted on 8 April 2010 (Bribery Act 2010), came into force in the UK. The goal of the law was to prevent bribery both on the territory of the UK itself and abroad. Thus,

like the FCPA, the UK Bribery Act has extraterritoriality. The Bribery Act, unlike FCPA, treats the concept of “bribery” broader and includes not only bribery but also its receipt, as well as extortion. To see the differences between these normative acts is extremely important for organizations operating at the global level. Compliance with anticorruption requirements and procedures that are sufficiently reliable for FCPA purposes will not always be reliable as part of the Bribery Act (UK). For example, in accordance with the UK Bribery Act applies not only to the actions of its own employees and agents of the British company but also to acts associated with it, which means any person performing services for a commercial organization or on its behalf. Unlike the FCPA, the UK Bribery Act establishes responsibility not only for bribing officials performing public functions but also for bribing officials in the private sector. The Bribery Act is a narrower concept of a foreign official than the FCPA and defines a public official as an individual having a legislative, administrative or judicial office of any kind appointed or elected by the country or entity of that country outside the United Kingdom.

The duty to comply with the rules of UK anti-corruption legislation for companies may arise in the following cases:

- 1) The company conducts business in the UK, has a branch or representative office on its territory;
- 2) The company acts as an “associate” (is a distributor, an agent of a company registered in the UK);
- 3) When interacting with British companies.

Article 7 of the Bribery Act provides for the company’s liability for “the inability to prevent bribery related to its activities.” In order to protect itself from criminal prosecution, the company will have to prove in the United Kingdom’s court that it has taken all necessary domestic measures to prevent corruption against “persons associated with it” (agents, distributors).

Companies whose activities are subject to the FCPA and Bribery Act, in order to avoid negative reputational consequences, to realize the prevention of corruption actions in which the company may be involved, and also to prevent the risk of prosecution, in addition to complying with the requirements of these anti-corruption acts, in an agreement with foreign partners include an anti-corruption or compliance clause, including, among other things, a provision on preventing corruption. The partner company undertakes to develop procedures in accordance with the code of conduct in order to prevent corruption. The presence of appropriate preventive procedures helps protect the company from liability.

In this situation, the topic of anti-corruption regulation and compliance is particularly relevant. One of the options for translating the word compliance (“compliance”) from English is compliance with rules, the implementation of rules. At the moment, there is no single understanding of the term in the domestic modern law. Compliance with mandatory compliance standards can be understood in two aspects: as a principle of the company’s activity and as such a state when the activity of the enterprise meets the requirements (i.e., the same principle but already embodied in practical activity). Non-compliance with anti-corruption regulations creates compliance risks.

Compliance assumes that the activities of the company and its employees should be regulated not only by the requirements of laws and by-laws but also by industry standards expressed in acts of self-regulating organizations, as well as norms enshrined in local regulatory enactments. Implementing compliance in life, the company simultaneously follows the principle of legality and ensures the rule of law in its activities and in the market of goods, works, and services in general. Unlike the relatively new concept of compliance introduced by foreign law and order, the definitions of law and order are not new to domestic law. Another NS. Tagantsev wrote that the legality of actions is determined on the basis of observance of the necessary formalities. Legality is the observance and enforcement of laws and other legal acts by all subjects of law.

In conclusion, it remains to be hoped that the legislative achievements of our country will increasingly be reflected in practice and corruption crimes will increasingly be prevented by implementing compliance procedures and monitoring their compliance.

Question 2

The SFO was established and received its powers in accordance with the Criminal Proceedings Law of 1987 and began its work in 1988. The Service investigates and prosecutes serious and major fraud, cases of bribery and corruption. SFO encourages companies to submit their own reports (on November 1, 2011, SFO introduced a new service called SFO Confidential in order to make the reporting process for corruption easier) about misconduct, and encouraging such behavior was the motive behind the introduction to UK law in February 2014 year deferred prosecution agreement (" DPA "). These agreements provide for a procedure by which commercial organizations that disclose information about fraud within their enterprise can agree with the SFO on a series of civil penalties (for example, fines, payment of compensation, review and monitoring) in response to the fact that SFO agrees not to pursue criminal prosecution.

SFO cooperates with other law enforcement partners to cope with the problems of serious organized crime in accordance with the government's strategy to combat organized crime. In particular, SFO closely cooperates with (a) the National Agency for Combating Economic Crimes, the International Service for Combating Corruption and the Intelligence Bribery and Corruption Unit; (b) the London Police, including the Office for Economic Crimes and the National Bureau of Fraud Intelligence; (c) British police forces and regional anti-organized crime units, regional asset recovery units and regional fraud control authorities; (d) the Royal Tax and Customs Service; (e) the Office of Financial Supervision.

The SFO also works closely with government departments in the UK, including the General Prosecutor's Office, the Ministry of Internal Affairs and the Ministry of Justice, and with foreign partners such as the US Department of Justice on issues where there is a common interest.

Recently, SFO launched an investigation into Tata Steel Ltd in connection with accusations related to

certificates used to verify the composition of products. Tata Steel Ltd, based in Mumbai, which seeks to sell its business in the UK, made a fraud statement after an internal audit that revealed unacceptable testing and certification.

Why Is It So Difficult To Determine When A Minor Gift, Entertainment, Or Incentive Constitutes A Bribe?

In the United States, it is somewhat more troublesome for them to demonstrate what is and what not a fix is. This is because of the arrangement that is set up for sensible installments and real operational expenses. I think the organizations comprehend this escape clause and the adventure it further bolstering their good fortune. The way that there are no limits set for what constitutes an unlawful installment is additionally an issue. The content notices where installments, for the most part, under \$100 are worthy, yet that does not imply that endowments over that are not satisfactory. (Ferrell and Fraedrich, 2015) There should be a significantly more unbending arrangement of guidelines set up that will permit those accused of upholding this demonstration the capacity to really authorize it.

The motivation behind why it is troublesome when a minor blessing, amusement or motivator constitutes a payoff is on account of aim must be built up, and that is hard to do. As indicated by the case examination, areas of payoff are hazy area on account of the affirmation of the illicit demonstration controlled by the view of the partners included [Schoolbook]. The inquiry would be if the expectation of the blessing to be in return for an upper hand or some likeness thereof should be demonstrated, and there are numerous approaches to introduce a circumstance that resembles bribery.

The finish of the year bubbly season can affect business life past office gatherings and time off work. Morals and consistency pros may fear this season, as the subject of blessings and neighborliness raises various moral difficulties. You may feel like the workplace Grinch managing that blessings and neighborliness can't be given or acknowledged.

There is almost certainly that the giving and tolerating of endowments and cordiality have a vital part in encouraging business connections and practice. Supper out with a provider can help fabricate a relationship; a pen with your company's name on it can help a client remember you when they require a statement.

Now and again, be that as it may, the line between what constitutes a blessing or accommodation and what constitutes a reward can be hazy, and the acknowledgment of endowments, administrations and friendliness can leave an association defenseless against allegations of unscrupulous or even unlawful direct.

At the point when is a blessing not a blessing? In the first place, consider what the purpose of the blessing or cordiality is. Is it to impact a relationship or actuate uncalled-for direct? Or, on the other hand, is it essentially a token of much appreciation?

What's The Desire?

It's a given that if the point is to make a desire for a "great" demonstration as a byproduct of the blessing or friendliness, at that point, it likely isn't a blessing.

Timing is likewise of key significance. Is it true that you are on the precarious edge of settling a huge negotiation with a client that, if secured, would build your end-of-year reward by a not-unimportant sum? Or then again, would you say you are being offered a blessing in the blink of an eye previously or amid an offering procedure? It isn't simply giving but additionally the tolerance of blessings and friendliness that is culpable under the UK Bribery Act.

Consider the fittingness of the blessing and whether it is relative to the level of the beneficiary. In the event that a center administrator looking for another activity offers focus court Wimbledon tickets to a senior director in another organization, would that be viewed as suitable or corresponding? Good judgment would recommend not.

What constitutes a "luxurious" blessing or neighborliness can be hard to judge. For instance, the obligations of ranking staff may expect them to go to or support occasions where neighborliness is liberal. What may appear to be minor to a senior supervisor could be fundamentally more important to a lesser representative. Some of the time, the correct estimation of a blessing or accommodation can be difficult to decide. There are likewise culturally diverse contemplations; a blessing esteemed at £20 might be considered as low an incentive in the UK, yet could be considered as rich in some less created economies.

Pick The Individual

Who is the present for? Giving blessings or friendliness to specific people, for instance, open authorities, is frequently interpreted as a help installment and stirs doubts. Nonetheless, the meanings of what constitutes an open authority can shift. In numerous nations, it can be hard to differentiate between a worker in a state-claimed endeavor and an individual from the administration who is additionally working inside the state-possessed organization.

A guideline now and then connected to figure out what is a suitable level of blessing giving or neighborliness is that of correspondence, i.e., in the event that I acknowledge an offer, am I ready to offer the identical in esteem consequently? For instance: "If my provider offers me tickets to the theater, would I have the capacity to respond?" If the appropriate response is "no," at that point, it might be viewed as an endeavor to purchase support, and it is prudent not to acknowledge it.

In what manner can organizations bolster staff? Numerous organizations adopt a zero resilience strategy to blessing and friendliness, giving and getting. Be that as it may, this isn't generally the most handy approach and can mean workers wind up in clumsy circumstances having to publically decrease the blessing or neighborliness.

This is especially valid for workers of multinational organizations working in nations where blessing giving is a vital social custom and instrumental in building proficient connections, for example, the giving of red envelopes for the Chinese New Year. A few organizations have selected not to execute a worldwide cover boycott, but instead, they have set out privately decided points of confinement for the estimation of endowments and friendliness that might be given or got.

Extra strategies may be set up with regards to open authorities, for example, bringing down as far as possible on endowments/accommodation or expecting representatives to acquire administration endorsement, paying little mind to the esteem.

Clear Arrangement

Representatives require direction on the organization's convention on giving or tolerating endowments or cordiality. This incorporates looking for an endorsement from their line administrator or somebody more senior, recording it in endowments, and cordiality enrollment. In some cases, endowments of high esteem may be required to be given to philanthropy or to the organization. Blessings of high esteem would then be able to be unloaded toward the finish of the year to raise reserves for philanthropy, for instance.

Direction is normally found in an organization's code of morals or blessing and accommodation strategy. This will lay out the organization's situation on blessings and cordiality, what constitutes blessing giving and neighborliness and set out great practices for workers. A blessings and accommodation arrangement should be reliable with every single other part of an association's morals program in empowering elevated expectations of trustworthiness and respectability in basic leadership and conduct.

Along these lines, there's no should be a Grinch. Convey your blessings and neighborliness approach to representatives and others you work with; urge representatives to think about the moral ramifications of previously giving and getting endowments; and offer extra help for the individuals who work in societies with various blessing-giving standards.

This will spare the two sides humiliation and, conceivably, your association's notoriety.

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