Greased Palms Can Create Big Headaches

Wednesday, Oct. 11 | 9:15 – 10:00 am

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Anti-Bribery? How Does This Have ANYTHING to Do with What I Do?

• Bribery is a huge issue when flying abroad
• Grease payments and gifts may:
  – Violate U.S. or foreign anti-corruption laws
  – Breach corporate ethics codes
  – Be costly and sometimes career ending

• Our Goal
  – What is the law?
  – How do you spot a bribe?
  – How can you reduce your risk?
Polling Question #1

- Do you have a company code of conduct that includes limits on giving or receiving gifts, entertainment or travel?
  - Yes
  - No
Where Is the Risk Greatest?

Source: Transparency International Corruption Perception Index 02/01/2016
Where Do Companies Get in Trouble?

Third Party Agents
- Due diligence of foreign third parties and agents is essential.
- U.S. companies are liable for acts of foreign subsidiaries, their employees and joint ventures as well as consultants, agents, distributors & representatives.

Gifts & Entertainment
- In many cultures it is common to give gifts as a general expression of goodwill but the boundary between a gift and a bribe can be narrow.
- Problems arise when the gifts are disproportionate, either in size, expense, or frequency.

Travel, Meals & Lodging
- Cannot offer to pay excessive travel and entertainment costs.
- Any expenses that are reimbursed directly to a foreign official should be done so only after receiving legitimate receipts and support.
Foreign Corrupt Practices Act (FCPA)

- **Anti-Bribery Provision**: Makes it illegal to make payments with a corrupt motive directly or indirectly, to foreign officials, officials of foreign political parties, or any other person acting as a conduit for payments to foreign officials or political parties, for the purpose of influencing the official, in order to assist in obtaining/retaining business.

- **Books & Records Provision**: Requires companies that file reports with the SEC to maintain records that accurately reflect transactions and the nature and quantity of corporate assets and liabilities.
The foreign corrupt practices prohibited by the FCPA consists of five separate elements:

1. A “covered person”
2. “Corrupt intent”
3. Directly or Indirectly Offers, Promises or Gives Anything of Value
4. To a foreign official
5. To obtain or retain business
The FCPA Applies Broadly for a Criminal Statute

- Applies broadly wherever there is a U.S. nexus
  - U.S. citizens, U.S. companies and their foreign subsidiaries
  - Wiring funds through a U.S. bank
- Foreign officials
  - The lowly clerk stapling your passport
  - Employees of foreign government-owned airlines, airport services providers, etc.
- Anything of value
  - Need not be cash
- Intent
  - Know or have reason to know agent was likely to pay bribes on your behalf

A COMPANY CANNOT OUTSOURCE THEIR CORRUPTION TO AGENTS/THIRD-PARTIES
WARNING SIGNS in “Plain English”

• “Please Pay Me In Cash”

• “Pay Me Through My Offshore Bank Account”

• “While My Commission Rate Is Twice The Market Rate, I’m Well Worth It”

• “My Close Relative Is a Government Official, and You Don’t Have a Chance Unless You Deal With Me”

• “I Have No Facilities or Staff, But I’ll Get the Job Done”

• “I Have Never Worked In Your Industry Before, But I Know The Right People”
Are Grease Payments OK?

Limited exception under the FCPA for facilitation or “grease” payments made to expedite or secure the performance of a routine governmental action by a foreign official are permitted by the FCPA, but **NOT** many other countries’ laws (e.g., UK & Germany):

- Obtaining permits on proper application
- Expedited lawful customs clearance
- Mail pickup and delivery, police protection, etc.
- Obtaining issuance of entry or exit visas

**Facilitating payments must be given to secure or accelerate performance of nondiscretionary acts that an official is already obliged to perform.**
Scenario – Proper Invoicing (no hidden charges) – Facilitation Fees

• You notice that one foreign supplier includes additional fees on its invoices, with no back up, as “miscellaneous.”

• When you question this, the supplier explains that it is an additional fee that they have been asked to pay to the permit office.

• They further explain that they have been unable to obtain a receipt for the cash and it is not included in the published price list.
Operational Views on Grease Payments

• What kinds of requests are pilots/handlers getting?
• How do you handle these requests?
• Company stance on grease payments?
• Do companies have expectations regarding service providers in foreign countries?
No Clear Line between Legitimate Promotional Expense and Illegal Bribe

**Gift**
- Moderate in cost
- Not money (i.e., food or flowers)
- Items:
  - Small novelties
  - With company logo
  - Not related to gaining business
- To foster good will or build relationships

**Bribe**
- Extravagant
- Money
- Items:
  - Large (big screen TV, motorcycle)
  - Related to gaining business
- An inducement or reward for business
Travel & Entertainment

• Reasonable in cost
• Customary practice
• You are in attendance (= entertainment)
• To foster good will or build relationships
• Specific business purpose

Bribe

• Expensive in cost
• Not customary
• You are not in attendance (= gift)
• An inducement or reward for business
• Tourist side trip

“Now, don’t expect the bribes to start in right away — you have to prime the pump with some free samples first.”
Polling Question

- I regularly tip one or all the following: handlers/customs officers/fuel providers
  - Yes
  - No
  - Sometimes
Tipping and Other Gifts in Practice

• How do you handle tipping?
• What is your process for giving gifts to handlers/agents/officials?
Tips for Mitigating Risk When Operating Abroad

• What processes has your company put in place to mitigate the risk of third-parties making payments on your behalf?

• What recommendations do you have for pilots/planners not associated with a large corporation with compliance resources?
Company Procedures & Codes

- Know Your Customer (KYC) Processes:
  - Ensure you are not transacting with sanctioned person (e.g., drug traffickers)
  - Identify risk of diversion of goods to sanctioned country (e.g., Iran, Syria)
  - Other risks of corruption/money-laundering

- Ethical Codes/Codes of Conduct
  - May limit what you can accept from third-parties
  - Avoiding conflict of interest
  - Protecting company confidential information
Additional Reasons Why Anti-Bribery Compliance Is Important

Increased Enforcement:
While the FCPA has been around since 1977, enforcement is up nearly 200% since '07. 2017 marks the 40th Anniversary of the FCPA. The total fines and disgorgements since inception totals approximately $9 Billion. $8.1 Billion has been paid since '07.

Increased Record Penalties:
Penalties are way up from prior years. The combined total in 2016 resulted in 53 enforcement actions topping $2 Billion USD.

Increased Enforcement Against Individuals:
DOJ and SEC are increasingly targeting executives and employees; sentences include jail time. Currently, companies may not get credit for an effective compliance program or a non-prosecution agreement without turning over the individuals suspected of bribing to the regulators.

In addition, there is increasing cooperation and coordination internationally with some investigations targeting entire industries or regions.
Questions?