

Fcpa paper essay

[Business](#), [Accounting](#)



The Foreign Corrupt Practices Act was amended by the International Anti-Bribery Act of 1998 in 1998. This act is requiring records and accounts about the transactions of companies in United States with traded stocks (“ United States Securities and Exchange Commission,”). This act aims on preventing bribery or any kind of payment to any foreign official, political parties or politicians that is related to any corrupt intention or in order to make influence such as prompting such official to do any act which is unlawful, or to use the official’s influence to a foreign government for any indecent advantage.

Whether the act is successful or not, it is still a violation and any amount whether small or large is considered as bribe. These are all included on the anti-bribery provisions, one of the two parts of the act. The “ foreign official” is defined as either an officer, employee of foreign institution, or any person performing as an official to represent any public international organization.

Besides payments, an offering or promise to pay of any value, absolution of debt, gifts, stocks, discounts not available to the public, offer of employment to foreign officials, and reimbursement of travel expenses are still prohibited and considered as bribery (“ United States Department of Justice,” 2007).

Regarding the travel expenses, any company should not pay for the foreign official’s and/or his relatives’ plane tickets, meals and lodging expenses unless part of promotion supported with written approval from the Division of the President and the Legal Department (“ Baker Hughes Guide to Complying with the Foreign Corrupt Practices Act (“ FCPA”)”). Any

United States person and foreign issuers of securities are prohibited on giving payment of any amount to a foreign official for “ obtaining or retaining

any business". Any foreign government is prohibited to be involved in these activities. An " issuer" is defined as any corporation with issued securities registered in the United States. On the other hand, the term " United States person" is defined as any association, corporation, organization, or company that is categorized under the laws of the United States.

Besides United States persons, foreign officials too are not exempted if involved in any illegal payment while still in the borders of the United States (" Lay Person's Guide to FCPA,"). This law was ratified by the American Congress to prevent bribery among foreign officials and also to reinstate public trust towards the American business system. During the mid-1970s, there were over 400 U. S. companies who confessed of having transactions of illegal payments amounting to over \$300 million dollars to foreign government officials, politicians and political parties (" United States Department of Justice," 2007). These transactions were held mainly to secure some favorable operations by foreign government in exchange of certain favors and duties.

Companies who where involved in these operations were charged of huge fines, some were suspended, while their employees were sent to jail. Firms made their actions to prevent detection of illegal payments through detailed compliance programs such as making of keep books and records that accurately represent all of the company's transactions. They must keep a record of all the original documents of any transaction such as receipts and expense reports. They must also provide a system of internal accounting controls that would ensure all transactions are in agreement with the

management. Through these records, bribes will be monitored and prevented.

These are all included on the second part of the act, internal accounting and record keeping provisions (“ Lay Person’s Guide to FCPA,”). Any business institution, if proven of anti-bribery violations, should pay a fine with a maximum amount of \$2 million per violation while officers or employees should pay \$250, 000 per violation with 5 years imprisonment. Any issuer or officer representing an issuer who violates ant-bribery provisions is subject to a \$10, 000 fine.

Violations on books and records provisions have higher penalties compare to anti-bribery provisions (“ The FCPA Explained,”). Any person with intended violation under books and records provisions is subject to imprisonment not more than 20 years or a fine not more than \$5 million. Moreover, any issuer with violations is subject to a fine not more than \$25 million (“ The FCPA Explained,”; “ Lay Person’s Guide to FCPA,”). A similar act was ratified among the United Sates and its trading partners through the Organization of Economic Cooperation and Development (OECD). By 1997, thirty-three countries and the United States signed the OECD’s “ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions”. Unlike American companies, foreign companies usually pay bribes while some were allowed to include such illegal payments as business expenses on their taxes (“ United States Department of Justice,” 2007). FCPA not only include illegal payments but also permitted or exempted payments. “ Grease payments” are payments to foreign officials

with the purpose of ensuring “ routine government actions” (“ Lay Person’s Guide to FCPA,”).

“ Routine government actions” is defined as actions that are commonly executed by a foreign official such as obtaining documents, (i. e. permits, licenses); processing government papers (i. e. visa, work order), providing police protection, and providing services (i.

e. phone service, power and water supply) (Taub, 2004). Besides “ grease payments”, foreign officials may also receive payments related to the promotion of a company product and services. Payments may be lawful provided that it has a written law on the foreign country, however it must constitute to the local law (“ Lay Person’s Guide to FCPA,”). All criminal and civil enforcement of anti-bribery provisions domestic, national and foreign private companies are enforced by the Department of Justice.

The Department of Justice is a Cabinet department in the United States established by the United States Attorney General in 1870, which implements the law as well as responsible in defending the rights of the American citizens (“ United States Department of Justice,” 2007). On the other hand, SEC (Securities and Exchange Commission) handles jurisdiction over public companies. SEC is another government agency in the United States established in 1934 which is responsible in regulating federal securities law and securities stock market created under the Securities Exchange Act of 1934 (“ United States Securities and Exchange Commission,”). Accounting provisions only affects issuers with registered securities in SEC The lack of knowledge about a violated transaction will not

mean exemption from a liability (“ Lay Person’s Guide to FCPA,”). The enforcement activities of the FCPA have been increasing through the years.

There has been an increase on the number of voluntary disclosures where seventeen were voluntarily disclosed out of the twenty disclosed FCPA investigations in 2006. Today, there are now 47 reported investigations. Penalties and criminal fines are also increasing, where \$26 million have been the highest (LaCroix, 2007).

FCPA has been also extending its borders when criminal enforcement was implemented to Statoil, a foreign issuer (LaCroix, 2007). Statoil, a multinational oil company based in Norway, was discovered to have violated FCPA when bribes were paid to an Iranian government official in exchange of aid for Statoil’s plan to build oil and gas field in Iran (“ SEC Sanctions Statoil for Bribes to Iranian Government Official,” 2006). Statoil was charged to pay \$10.5 million criminal fine. They were also obliged to maintain keep books and records which will then be reviewed by a consultant. Another notable case was with the InVision Technologies Incorporated. InVision Technologies, a publicly traded company, manufactures and sells airport security screening devices that are used in detecting explosives. It is based in Newark, California recognized for its product called CTX explosive-detection device.

The company was penalized of \$800,000 fine in 2004 because of the company’s third party distributors. The company divulged some of the information about one of its staffs’ failure to examine red flag emails (“ InVision Technologies”). Another issue was involving the Lucent

Technologies, manufacturer of telecommunications equipment and provider of services such as telephone switching, and data and wireless networking. The company fired four executives in its China-based operation where one of the fired personnel was the president. The violations and the names of the executives were not detailed but the issue was disclosed during an FCPA inspection on Lucent's Saudi Arabia operations.

The National Group for Communications and Computers Ltd. based in Saudi Arabia claimed that Lucent Technologies paid a bribe amounting to \$15 million for favorable treatment from a Saudi Arabian minister (Taub, 2004). The company, after the incident, made certain improvements on its policies with the cooperation from SEC and the Department of Justice in order to prevent such incident. Lucent is operating in twenty three foreign countries (Taub, 2004). FCPA related investigations have been increasing in frequency. The Department of Justice and SEC have been very critical in investigating U.S.-based companies and its partners throughout the world.

The jail terms were longer and the criminal fines were much higher than before. REFERENCES: InVision Technologies. Retrieved 9 June, 2007, [http://en.](http://en.wikipedia.org/wiki/Invision_Technologies)

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