Research paper on the foreign corrupt practices act

[Business](), [Company]()

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Introduction

The Foreign Corrupt Practices Act which was put in place in 1977 sought to address two core issues. The Act demands that accounting transparency from the company’s senior management and prohibits the bribery of the foreign officers. There was a need for the law when in the 1970’s the US security and Exchange Commission through its investigations ascertained that over 400 companies had made illegal payments to people in political power and more so those in foreign governments.

American companies had been bribing the foreign officials so that they could change the political and economic policies in their countries to favour them. The management of Chiquita brands had given a bribe to the president of the Honduras republic so that he could lower the taxes in his country. The Lockheed aerospace company bribed the foreigners so that they could prefer its products over the others

The international community noted the adverse impact of bribery in economic development and in 1997 the Organization of Economic Co-operation and Development had a convention that was labelled Combating Bribery of the Foreign Public Official in international transaction. All the members of the international body who are 29 signed the convention. The international body expected the member states to introduce laws in their country that would deter and dissuade bribery in international business transactions. They were also expected to be cooperative in the extradition and prosecution of the offenders. The convention also contains provisions where the member states have the opportunity to evaluate each other’s implementation of the obligations put in place.

The FCPA law was amended in 1998 when the legislature passed the international anti-bribery Act to incorporate the guidelines or the conventions of the Organization of

Economic Co-operation and Development. The amendment expanded the jurisdiction of the FCPA act to include non-US companies and business conducting business in the United States. The law also started applying to the US citizens and companies operating in foreign countries.

Foreign Corrupt Act Guidelines

The law prohibits any person or company carrying out business in the United States whether of local or foreign origin from offering to pay and paying foreign politicians and political parties or those who are vying for political positions money or any other valuable consideration with the intention of influencing their decisions or courses of action. It is illegal to entice or cause a foreign official to abuse his power and act improper so that the business person or company can secure a certain advantage over others. In addition, all companies whether foreign or local that trade securities or file their returns with the US security and Exchange Commission are expected to maintain books of account which are transparent and clearly and accurately reflect the business transactions. The senior management is also expected to maintain effective internal controls.

There are however three exceptions to the FCPA act. The Act does not prohibit the payment of " grease payments" to government officials for the purpose of ensuring that the performance of routine actions is expedited. These grease payments are usually payments that the company makes to the minor government officials so that they have the incentive to perform certain actions (Koch, 2005). These routine government actions include processes such as processing the business permits and licenses to be able to conduct business in the foreign country, processing the staff’s visas and work permits and obtaining services such as police protection (Pederson, 2008).

The second exception relates to payments that are allowed or legal in the host country. If the bribery is legal in the host country, then the company should obtain the permission in writing. This is an exception that is rarely utilized. A company is allowed to pay money where there is a legitimate business activity. A company is allowed to make payments to enable a government official to be educated or trained on the company’s products (Glynn, Kobrin & Naim, 1997, p. 18). There are those companies which as they navigate the international business environment may find themselves lacking clear guidelines on whether their intended payments are illegal or not. For such companies, they have an opportunity to communicate with the Department of Justice and get an advisory opinion on whether the payment they intend to make is allowed by the law. Once they are given the green light, they go ahead with their activities with the certainty they have mitigated their liability.

There are companies who hire agents to conduct their business in order to mitigate the risk of liability. These agents assist greatly as they give advice on cultural inclinations of foreign parties, gain access to see the officials and help break the language barriers. Prosecutors however are wary on the use of agents as they suspect they are usually involved in bribery. Congress saw there was a loophole since companies could bribe officials through third parties. The law therefore states that where company officials are aware that their agents are bribing officials or there is a high probability that illegal payments will be made, the officials will be liable for violation of the FCPA act.

Associated Fines and Penalties

There are penalties that are incurred by those individuals and companies who violate the law. Where the anti-bribery laws are violated, a company will find itself with fines of up to $2 Million for each of the violations while an individual will be fined up to $250, 000. The officials will also face imprisonment for a period of five years. For those ones who violate the laws on the books of account and internal controls, the company will have fines of up to $25 Million while an individual will face a fine of $5 Million.

The government has the authority to terminate a company’s government licence and prevent the company from participating in government contract programs. Companies found in violation of the Act can also be controlled by an independent compliance body for several years which becomes cumbersome and costly. The US government also orders the companies to disgorge any profit accrued to the company through the acts of bribery. The companies therefore end up settling the cases with the government at double the costs which is very expensive.

Impact of the FCPA Act on Local and International Business

The Act has had a significant impact on businesses. They have incurred additional costs in instituting compliance departments to ensure that the employees and agents do not make any illegal payments. The Act is enforced jointly by the Department of Justice and the Securities and Exchange Committee. There are many firms which have been investigated and ended up being at the receiving end of the criminal and civil enforcement actions. Businesses are therefore wary and cautious not to go through the costly and cumbersome court proceedings (Sheffet, 1995).
There was a recent case where a Dutch corporation affiliate and two American subsidiaries were involved in bribing a Panama official in order to obtain a piece of property along the Panama Canal and government contracts. They would also get favourable tax treatment from the government. The defendants pled guilty and they were fined $1. 5Million and five years in prison. There was also an American Corporation that provided first class air travel to a senior Egyptian official and his family in order to gain an improper advantage against the competitors.
The intense competition in the international scene and the high tendency of foreign officials to turn an unseeing eye to bribery especially in the developing countries has caused the American companies to lose out in many contracts. The other competitors operating from other countries do not have laws restricting their bribery actions.

Conclusion

The FCPA Act therefore has worked to deter corruption in the market place. Bribery raises the business costs of the company. It also acts as an impediment to the economic development and investments in the developing countries.

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