

# Foreign corrupt practices act essay



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In today's ever changing and competitive modern world of business, it is critical for the companies to have activities internationally. In order to prohibit frauds and illegal activities, several acts and documents have been elaborated.

One of the documents is Foreign Corrupt Practices Act that has been enacted in the 1970's, as a result of SEC investigation of several U. S. companies that made illegal payments to foreign governmental officials, politicians, and political parties (Barnes 73). The FCPA had a critical impact on the way U.

S. firms do business. Companies that did not comply with FCPA have been subject of criminal and civil enforcement actions that later resulted in huge fines and sentences for their officers and employees. In addition, SEC is responsible for all civil enforcement while Department of Justice is responsible for all criminal enforcement. As a consequence, firms developed specific compliance programs that helped to avoid such actions.

Event though the FCPA was passed, the Congress became concerned that U. S firms were disadvantaged to foreign companies who periodically paid bribes. Therefore, after years of negotiation in 1997, United States and other thirty three countries signed the Organization of Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transaction. The FCPA is enforced by Department of Justice and SEC and its violation often occur outside of the United States. Therefore, business people must be knowledgeable about all business activity, including overseas activities ("FCPA Enforcement"). It is imperative for the companies to comply with FCPA regulations.

The Department of Justice requires the board of directors to exercise review of the compliance program and encourage ethical conduct and commitment to comply with the law. Therefore, it is crucial for firms to have written policies and standards to guide employees and agents ("Ten Questions" 30). Thus, it is necessary to understand the FCPA provisions. The payments prohibition provision describes five elements which must be met to constitute a violation of the act.

For instance, FCPA potentially applies to any company, employee, agent or individual acting on behalf of the firm. Moreover, the parent corporations may be liable for the action of foreign subsidiaries where they controlled the activity in question. The payment must induce the official to misuse his position in order to influence a governmental decision for purpose of obtaining a business. Overall, if a corrupt payment is made to an official representative with a business purpose, a violation of FCPA occurs. Another component of the FCPA provisions is the permissible payments and affirmative defenses. If the payment to a foreign official is to secure routine governmental actions then it is considered grease payment.

For instance, obtaining licenses, providing police protection, processing visas and work orders are considered routine governmental actions ("FCPA Anti-bribery Provision"). The person or the company charged with a violation of the FCPA has the right to the affirmative defense in case when it can prove that the payment is lawful under the written laws of the foreign country or is directly related to demonstration, or promotion of the products. Finally, the fines and penalties provision of FCPA provides sanctions against bribery. As

was mentioned in the beginning, Department of Justice imposes the criminal penalties, and SEC the civil ones.

For instance, corporations and other business entities are subject to a fine up to \$ 2, 000, 000 dollars, while employees, officers, agents up to \$ 100, 000 dollars and imprisonment up to five years. In addition, the Attorney General or the SEC may bring a civil action if the company appears in violation of the anti-bribery provision (“FCPA Anti-bribery Provision”). With FCPA compliance moving higher on regulatory agendas, it has become more and more important for companies to avoid or correct potential missteps. To this end, some companies have started deploying internal audit teams to help their compliance and legal departments uncover potential FCPA breaches and improve processes and controls. However, not all companies succeed to comply with all regulation, even though apparently it looks that all operations are lawful.

For instance, United States vs. Kay case, No. 05-20604, 2007 U. S. could lead to broader enforcement actions under the FCPA (“FCPA Gets Broader Reach”). The company President (Douglas Murphy) and Vice President for Caribbean Operations (David Kay) at American Rice, Inc.

took several steps in order to reduce sales and taxes costs to rice exported to Haiti. Even though their actions included paying officials to resolve tax issues, underreporting imports to reduce duties and taxes, paying officials to accept the underreporting, the district court granted a motion to dismiss the indictment, holding that the scope of FCPA did not extend to paying foreign officials for the purpose of reducing taxes. In contrast, the court of appeal

reversed in *United States vs. Kay*, holding that bribes paid to foreign officials in consideration for unlawful evasion of sales taxes fall within FCPA.

As a result, the jury found Kay and Murphy guilty of violating the FCPA by paying foreign officials to retain their business in Haiti (“FCPA Gets Broader Reach”). Moreover, the court rejected defendants’ argument that its interpretation of the FCPA extended criminal liability under the statute beyond the explicit terms of the Act. Therefore, it is critical for the companies to have explicitly written compliance procedures in order to avoid big fines and penalties. Over past several years the guidance on the FCPA provision has steadily grown. However, companies do not consider all provision, and are charged for several unlawful transactions.

Due to aggressive and potentially controversial interpretation of the FCPA, there are lots of companies under ongoing investigations. For instance, Imperial Metal Industries and its subsidiary Control Components, Inc. are considered to violate anti-bribery provision of the FCPA, and related charges based on the conduct of former employees who paid bribes to countries such as China, Brazil, India, and Malaysia. Control Components, Inc designs, manufactures, and supplies valve systems for power generation, oil and gas, petrochemical, and pulp and paper facilities worldwide. Department of Justice has obtained indictments against six former Control Components, Inc. executives related to violation of the anti-bribery provision of FCPA who are now waiting for trial.

Moreover, two other former executives have pleaded guilty to related charges (“FCPA Digest”). Previously, in August 2007, Imperial Metal

Industries announced that it had initiated an internal investigation of irregular payments associated with certain Control Conglomerate, Inc. contracts and had notified government authorities (“FCPA Digest”).