

The Foreign Corrupt Practices Act

What you need to know

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Introduction

- Foreign Corrupt Practices Act (FCPA), UK Bribery Act
- OECD Convention
- Vietnam's Anti-Corruption Law
- Vietnam's Penal Code
- Vietnam's Anti-Money Laundering Law

FCPA

- What's prohibited?
 - ● Paying or offering to pay--anything of value, “while knowing”
 - ● “Foreign official”
 - ● To secure any improper advantage
- Accounting and Internal Controls, “books and records”
 - ● All transactions need be recorded, misrecording
- Subsidiaries
- Affiliates (own 50% or less--good faith)
- Consequence of few prosecutions

Enforcement

- Department of Justice, Securities and Exchange Commission
- 2013: more individual, than company prosecutions
- Whistleblowers: #3; US\$450M pool
- “Strong pipeline”

Knowledge

- Criminal act; being aware, conscious disregard
- Red flags put you on notice of possible violation
 - ● Vietnam 123 of 176
 - ● Industry
 - ● Cash payments
 - ● Unusual payments, offshore payments or third party payments
 - ● Are fees reasonable?
 - ● Consulting agreements with no discernible purpose
 - ● Consultant who trades on government contacts, not technical capability

What can I do to avoid FCPA problems?

- We will discuss some steps
- Management commitment, culture of anti-corruption, controls, internal systems, training, alertness to red flags, prudence, are all hugely important

WHY

Managing Risks - Gifts

- Does it violate local law, is it customary?
- Not extravagant, nor frequent
- No wrongful intent
- Given openly, company logo
- Won't result in a sense of obligation
- Recorded clearly in books

M&A

- Avoid acquiring an FCPA issue
- The acquiring company has to be careful to avoid acquiring a company with a hidden FCPA issue. An FCPA due diligence, FCPA-focused review is necessary
- The informal 18 month rule

How to mitigate risks

- Create a culture of compliance
- Commitment by senior management, talk about corruption
- Screen employees
- Compliance training for staff, and for subsidiaries, contractors, consultants
- Specific training--gifts, entertainment, etc
- Code of Conduct, (compliance by self, subsidiaries and contractors), Internal Labor Regulations
- Internal screening: cash policies, bookkeeping, unusual contracts
- Whistleblowing system: confidentiality, anonymity
- Document what you do

What to do if you are alerted to a possible violation?

- Small group--company, outside advisors--to assess situation (credibility of claim, seriousness, motivation of whistleblower, etc)
- Suspend perhaps, but don't terminate
- Attorney-client privilege--extends to others in the group
- Full investigation, interview
- Data analysts to do forensic review; eg, payments, physical documents, emails, texts, etc.
- Privacy issues



Thank you