Product Responsibility Best Practices

SUBJECT	LAST UPDATE
Foreign Corrupt Practices	July 2019

APPLIES TO	FOCUS ON
• Suppliers • Disributors	Worldwide anti-corruption legislation addressing bribery of foreign public officials when conducting international business

QUICK LINKS

- PPAI Corporate Responsibility: www.ppai.org/inside-ppai/corporate-responsibility/
- UL: industries.ul.com/premiums-promotional-and-licensed-goods
- Consumer Product Safety Commission: www.cpsc.gov

Intended for intermediate compliance programs

Italic grey text indicates a hyperlink listed in the Online Resources section of this document.

Background

The *Foreign Corrupt Practices Act (FCPA)* was enacted in 1977 for the purpose of making it unlawful for certain individuals or companies to make payments to foreign government officials to assist in obtaining or retaining business.

> "Specifically, the anti-bribery provisions of the FCPA prohibit the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person."
>
> \- United States Department of Justice

Amendments were made in 1998 to allow the anti-bribery provisions of the FCPA to also apply to foreign firms and individuals who cause, directly or indirectly through agents, an act of corrupt payment to take place within the United States. The FCPA also requires companies whose securities are listed in the U.S. to meet specific accounting provisions. The accounting provisions require corporations covered by the provisions to keep books and records that accurately reflect the transactions of the corporations and enable adequate internal accounting controls.

Worldwide Participation

The predominant source of worldwide anti-corruption legislation is the *The Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

More than three dozen countries, including the United States, have laws enacted pursuant to the OECD Convention:

- Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom
- Many other countries worldwide have anti-corruption laws; this list is not exhaustive.

Components And Enforcement

The FCPA is enforced by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), and it has two primary components.

1. Anti-bribery - The FCPA criminalizes improper payments to foreign officials anywhere in the world where the purpose of such payments is to influence an official in order to obtain a business benefit.

   a. Criminal penalties for individuals include fines up to $250,000 or twice the amount of the pecuniary gain sought in the alleged transaction, imprisonment of up to five years, or both. Individual fines cannot be paid by corporations.

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b. Fines for companies can be up to $2 million or twice the amount of the pecuniary gain sought in the alleged transaction.

2. Records and controls - The FCPA also requires companies whose stock is traded on a U.S. exchange to meet certain standards regarding their accounting practices, books and records, and internal controls.

   a. Accounting and internal controls

      i. Individuals who willfully violate recordkeeping and accounting provisions may be fined up to $5 million, imprisoned up to 20 years, or both.

      ii. Corporations may be fined up to $25 million.

      iii. Alternatively, both individuals and corporations may be fined up to twice the amount of the pecuniary gain sought in the alleged transaction.

      iv. The SEC may levy additional fines, injunctions, and remedies.

Government Officials Refer To:

- Elected or appointed parliament members, ministers, governors, mayors, etc.
- Officials and employees of foreign government agencies
- Officials and employees of foreign state-owned commercial enterprises, such as state-owned factories or processing plants
- Any person acting in an official capacity on behalf of a foreign government
- Officials and employees of public international organizations, such as the International Monetary Fund (IMF), United Nations, or World Bank
- Officials of foreign political parties
- Candidates for foreign political office

For particular FCPA compliance questions relating to specific conduct, you should seek the advice of counsel as well as consider using the Department of Justice's FCPA Opinion Procedure.

Online Resources:

PPAI Social Responsibility:
www.ppai.org/inside-ppai/corporate-responsibility/social-responsibility/

U.S. Securities and Exchange Commission:
www.sec.gov/spotlight/fcpa.shtml

Organization for Economic Cooperation and Development:
www.oecd.org/corruption/

Foreign Corrupt Practices Act
www.justice.gov/criminal/fraud/fcpa/

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

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