

International Bribery Rules Have Changed: Is your FCPA policy up-to-date?

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Last week's International Law conference in New York focused a great deal of attention on the Foreign Corrupt Practices Act. If your business operates in more than one country, you may find the following key takeaways from the conference valuable to review.

1) FCPA investigations and enforcement is being significantly increased by the DOJ and the SEC, and both agencies expressed the determination to increase criminal prosecutions against individuals.

2) The UK just passed an FCPA of its own. The gist of it is this:

- the UK law does not permit facilitating ("grease") payments,
- it applies to private bribery as well as the bribery of foreign officials,
- it imposes strict liability – unless you can show that you have adequate policies and procedures in place that are designed to prevent the bribe.

Somewhat disturbing, the UK law applies to any company that is doing business in the UK. Therefore, if you have operations in the UK and one of your agents on behalf of a U.S. division makes a facilitating payment in Africa (which is legal under the FCPA), the UK law would still be violated even though the transaction has no nexus to the UK whatsoever. (We heard that directly from UK enforcement officials.)

If you do not have an FCPA policy in place, you need one. If you have one, it probably needs to be updated to address the new UK law.

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