

Fraud and Bribery: Kissin' Cousins

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Forgive me for asking this question but why do consultants and accountants separate the concepts of fraud and bribery. To me, bribery is a form of fraud.

Where there is fraud there is likely to be bribery – company actors are bribing others or company actors are taking kickbacks for contracts with the company. Both of these schemes involve fraud. One of them is prohibited by the FCPA, the other is proscribed by a number of federal criminal laws.

Bribery and fraud go hand in hand. All too often the funding device for a bribery

scheme is to pilfer the corporate accounts and move the money to person accounts, sometimes offshore or secret, other times bribers use their personal (or related) bank accounts over which they can exercise control.

A suspicion of fraud requires companies to consider that their employees may be doing both – bring others in the government or accepting bribes from vendors who want to do business with the company. It is striking to me how much everyone in the industry tries to separate these two schemes and develop solutions for one without the other. That is a mistake.

Fraud detection means one thing – money is not being used for its proper purpose. When that is discovered, lawyers with accountants need to quickly get to the bottom of the matter and start to develop a response plan. It does not make sense to ever say – “It is just a kickback scheme.”

Instead, lawyers and auditors need to ask several questions:

1. Are company funds being diverted to an unauthorized use?
2. If the answer to 1 is “Yes,” then what are the possible unauthorized uses?
3. Even if the scheme appears to benefit an individual (or small group of individuals), has the company confirmed what the individual is doing with the money (or what the individuals are doing with the money)?

Once these questions are answered, the lawyers and auditors need to develop an action plan to conduct an internal inquiry which could focus on a bribery and/or a theft scheme. It would not be

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surprising that a company employee who is bribing government officials is also stealing money from the company for his own personal benefit.

Fraud detection is the first line of defense to bribery. It is an important point to remember and FCPA specialists, whether lawyers or auditors, need to focus on fraud first and then try and figure out the specific circumstances of the fraud scheme and whether bribery was involved.