

MULTINATIONAL CORPORATIONS AND THE FOREIGN CORRUPT PRACTICES ACT: A LEGAL LOOK AT TRANSNATIONAL BUSINESS

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RESUMEN

Las corporaciones multinacionales (MNC) juegan un papel importante en la economía mundial y la Ley de Prácticas Corruptas Extranjeras ha tenido un gran impacto en la forma cómo las multinacionales realizan sus negocios. La aprobación de la Ley de Prácticas Corruptas Exteriores (FCPA) del gobierno de los EE.UU. en 1977 fue un acontecimiento decisivo en la lucha contra la corrupción en la era de la posguerra (Cragg, 2002). A raíz de las investigaciones de Watergate, que revelaron el soborno de funcionarios extranjeros extensa por las corporaciones estadounidenses, se produjo un remolino de indignación moral (Brown, 1998). El mismo tipo de indignación moral que se escuchó en la estela de Enron y, más recientemente, en la investigación sobre contratos de Halliburtonen, Nigeria. El gobierno de los EE.UU. está llevando a un número creciente de casos, bajo la bandera de la FCPA, que tiene por objeto reducir los sobornos cometidos en los EE.UU. y las corporaciones extranjeras. El aumento es especialmente preocupante para las empresas que buscan realizar adquisiciones internacionales, como los que se enfrentan la carga sin ninguna responsabilidad bajo la FCPA, comprometidos por la empresa que están comprando. También debe preocupar a las empresas extranjeras en general cómo el gobierno de EE.UU. ha mostrado una voluntad de investigar e interponer las acciones contra las empresas cuya presencia en los EE.UU. se limita sólo a alguna representación en los mercados de capital, por ejemplo, una lista de los mercados locales de valores en la forma de American Depositary Receipt (Friedlander, 2005). La FCPA es sólo un ejemplo de cómo el gobierno de los EE.UU. ha tratado de regular la conducta de las multinacionales estadounidenses en el extranjero (Borg, 2003). Empresas de EE.UU. que buscan hacer negocios en los mercados extranjeros deben estar familiarizados con la FCPA. En este trabajo revisaremos la historia y las partes de la FCPA, por su eficacia y su impacto actual y futuro de las corporaciones multinacionales americanas.

PALABRAS CLAVES

Corporaciones, multinacionales, economía, ley, mercados.

ABSTRACT

Multinational Corporations (MNC) play a major role in the world economy and the Foreign Corrupt Practices Act has had a major impact on how MNC conducts business. The passage of the Foreign Corrupt Practices Act (FCPA) by the U.S. government in 1977 was a watershed event in the fight against corruption in the postwar era (Cragg 2002). In the wake of the Watergate investigations, which revealed extensive bribery of foreign officials by American corporations, there was a maelstrom of moral outrage (Brown, 1998). The same sort of moral outrage that was heard in the wake of ENRON and more recently in the Halliburton investigation involving Nigerian contracts. The U.S. government is bringing an increasing number of cases under the banner of the (FCPA), which is intended to curtail bribery committed by both U.S. and foreign corporations. The increase is especially worrisome for companies looking to make international acquisitions, as they face the burden of being saddled with any liabilities under FCPA committed by the company they are buying. It should also concern foreign companies in general, as the U.S. government has shown a willingness to investigate and bring actions against corporations whose presence in the U.S. is limited only to some representation in the capital markets-for instance, a local stock market listing in the form of an American depositary receipt (Friedlander, 2005). The FCPA is just one example of how the U.S. government has sought to regulate the conduct of American MNCs in foreign countries (Borg, 2003). U.S. firms seeking to do business in foreign markets must be familiar with the FCPA. This paper will review the history and parts of the FCPA, its effectiveness, and its current and future impact on American Multinational Corporations.

KEYWORDS

Corporations, multinational, economy, law, markets.

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INTRODUCTION

Rebuilding contracts for Iraq are up for grabs, but construction companies as well as other MNC's should beware. Updated bribery and corruption laws are clamping down on irresponsible trade (Brown, 2003). As a consequence of the war in Iraq, the role of MNCs in the country's rebuilding is once again whetting the appetite of MNCs worldwide. Such companies and their lawyers will have usual problems. These include: the choice of law; the type, method and forum of dispute resolution; the clash between Western and local cultures; and the all-too-common requirement in overseas contracting for gifts, facilitation payments or outright bribes. The US authorities also have increasingly focused on conduct in China, having charged multiple companies and individuals for FCPA violations in the country over the last three years (Loftus, 2009). For companies involved in overseas contracting, the price and risk is rising rapidly (Brown, 2003). Knowing how to manage these problems can mean the difference between success and failure in the international arena.

The US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have dramatically increased enforcement of the (FCPA) in recent years. Tellingly, the SEC has filed more FCPA cases since 2006 than it had in all of the prior 28 years since the law was enacted. In the past seven months, the SEC and DOJ set records for financial sanctions in FCPA actions with an US\$800 million settlement with Siemens AG and certain subsidiaries and a settlement with KBR and Halliburton totaling \$579 million (Loftus, 2009). U.S. construction companies and other MNCs operating abroad must now behave in a socially responsible manner in relation to their local partners. A failure to behave in a socially responsible manner may lead to investigation and possible charges under the Foreign Corrupt Practices Act (FCPA). They may face criminal prosecutions, which can result in unlimited fines for the company and imprisonment of up to five years in the U.S. (Brown, 2003).

HISTORY OF FCPA

U.S. attention first focused on business corruption with the discovery of massive bribery by the U.S. business community during the "Watergate" scandal in the early 1970s. During the investigation of illegal campaign contributions made to Richard Nixon's campaign for a second presidential term, it was discovered that at least twenty-five of America's largest companies were making illegal contributions, including American Airlines, Ashland Oil, Exxon, General Motors, Gulf Oil, International Telephone and Telegraph, Lockheed Aircraft, and United Brands. In addition to the discovery of illegal campaign contributions, the U.S. government discovered that the practice of offering kickbacks and making cash gifts in exchange for business was simply part of the modus operandi (Lacey, 1999).

As a result of SEC investigations in the mid-1970s, over 400 U.S. companies admitted making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties. The abuses ran the gamut from bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharged certain ministerial or clerical duties. Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system (DOJ, 2004).

The FCPA has two main provisions. The antibribery provisions of the FCPA makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. The accounting provision of the FCPA also requires companies whose securities are listed in the United States to meet certain accounting requirements. See 15 U.S.C. § 78m. These accounting provisions, which were designed to operate in tandem with the antibribery provisions

of the FCPA, require corporations covered by the provisions to make and keep books and records that accurately and fairly reflect the transactions of the corporation and to devise and maintain an adequate system of internal accounting controls (DOJ 2004).

The FCPA applies to U.S. Corporations, citizens, and residents, as well as foreign corporations whose shares trade in the U.S. securities market. It applies specifically to foreign corrupt practices outside the United States (Avi-Yonah, 2003). The FCPA was amended in 1998, partly to address the issue of territorial jurisdiction over foreign companies and nationals. Under the amendment, a foreign company or person is now subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States (DOJ 2004). Furthermore, U.S. parent corporations may be held liable for the acts of foreign subsidiaries where they authorized, directed, or controlled the activity in questions, as can U.S. citizens or residents, themselves who were employed by or acting on behalf of such foreign-incorporated subsidiaries (DOJ 2004). To the surprise of many non-US companies, the FCPA's jurisdictional reach is very broad and it does not only apply to US companies and citizens. The law also applies to companies with securities registered or listed in the US, even if they are incorporated elsewhere. Non-US companies and individuals can also run afoul of the FCPA if they or their agents cause some act in furtherance of a bribe that has a connection to the US - such as a payment that clears through a US bank (Loftus, 2009). Indeed, witness General Electric's \$23.4 million settlement last year of SEC charges that GE and two subsidiaries violated the FCPA by participating in a kickback scheme with the Iraqi government. The alleged violations occurred before GE acquired the two subsidiaries, Ionics and Amersham. Nevertheless, "corporate acquisitions do not provide GE immunity from FCPA enforcement of the other two subsidiaries involved," said Cheryl Scarborough, chief of the SEC's FCPA unit, at the time (Johnson, 2011).

"Some scholars have argued that the FCPA reflects "cultural imperialism": Payments

considered commonplace in one culture may be considered corrupt in another" (Avi-Yonah, 2003). This issue was also addressed to some extent by the 1988 amendment to the FCPA. In addition to asserting jurisdiction over foreign companies or their personnel, the 1988 amendment clarified that the FCPA does not apply to payments that are lawful in the jurisdiction of the foreign recipient. Under the 1988 amendment, the "facilitating payments," exception was established. This exception provides that the FCPA does not apply to payments made to foreign government officials for "routine government action" (Avi-Yonah, 2003).

The scope of the "facilitating payments" exception, however, is unclear and the core provisions of the FCPA remained unchanged. The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone services, power and water supply, loading and unloading cargo, or protecting products; and scheduling inspections associated with contract performance or transit of goods across country. "Routine governmental action" does not include any decision by a foreign official to award new business or to continue business with a particular party (DOJ 2004). MNCs should be aware because the "facilitating payments" exception only provides an affirmative defense, which can be used to defend against, not prevent alleged violations of the FCPA.

Penalties and Sanctions Against Bribery

- (1) (A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be fined no more than \$2,000,000.
- (B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

- (2) (A) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (i) of this section shall be fined no more than \$100,000 or imprisoned not more than 5 years, or both. (B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of no more than \$10,000 imposed in an action brought by the Attorney General.
- (3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

There can be civil penalties as well. The Attorney General or the SEC, as appropriate, may bring a civil action for a fine of up to \$10,000 against any firm as well as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm, who violates the antibribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or (ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from \$5,000 for a natural person and \$50,000 for any other person or, up to \$100,000 for a natural person and \$500,000 for any other person.

The Attorney General or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the antibribery provisions. The SEC may also enter a cease-and-desist order against a person who violates, or is about to violate, the antibribery provisions.

Other Governmental Action

Under federal criminal laws other than the FCPA, individuals may be fined up to \$250,000 or up to twice the amount of the gross gain or gross loss if the defendant derives pecuniary gain from the offense or causes a pecuniary loss to another person. The FCPA's penalty provisions do not override the provisions in these other statutes providing for alternative fines.

Furthermore, under guidelines issued by the Office of Management and Budget, a person or firm found in violation of the FCPA may be barred from doing business with the Federal government. Indictment alone can lead to suspension of the right to do business with the government. The president has directed that no executive agency shall allow any party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded that party from participation in a procurement or nonprocurement activity. No executive party or agency will allow any party to participate in any procurement or nonprocurement activity if any agency has excluded that party.

In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses. The SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA. The Commodity Futures Trading Commission and the Overseas Private Investment Corporation both provide for possible suspension or debarment from agency programs for violation of the FCPA. Furthermore, a payment made to a foreign government official that is unlawful under the FCPA cannot be deducted under the tax laws as a business expense.

A company's central management is ultimately responsible for any criminal conduct by its business divisions and employees, and must therefore implement policies and procedures to ensure that they promptly discover and correct any potential violations. The Sarbanes-Oxley Act requires "up-the-ladder" reporting by and within a company's legal department

of suspected violations of law, to ensure that central management becomes aware of material violations and remedies them. If enough such violations go unreported, there may arise the kind of “pervasive” and unremediated wrongdoing that is almost certain to trigger the wrath of prosecutors and bring serious consequences for the company, its senior management, and its attorneys (Raphaelson, 2003).

Private Cause of Action

Conduct that violates the antibribery provisions of the FCPA may also give rise to a private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), or to actions under other federal or state laws. For example, a competitor who alleges that the bribery caused the defendant to win a foreign contract might bring an action under RICO. Therefore, prosecution under the FCPA may only be the beginning of the problems for a MNC who finds them in violation. Under RICO, a MNCs competitor can bring suit directly against the violator.

OTHER ACTS IN RESPONSE TO BRIBERY

To compound the potential problem for a violating MNC, available for the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), are even harsher penalties. These penalties were made available under the 1998 Trade Act and the 1998 International Antibribery Act. Under these acts, penalties are sometimes twice the amount contained in the 1977 FCPA. To the 1998 International Antibribery Act, penalties have been added to the act to include the category of persons other than issuers or domestic concerns that engage in prohibited foreign trade practices (George, 1999).

At one point, only the United States had adopted prohibitions against bribery. It was not until recently that other countries became willing to consider following the lead of the U. S. in adopting prohibitions against bribery. Some countries, in fact, went so far as to allow tax deductions for bribery payments (Lacey, 1999).

These and other practices by other countries placed U.S. MNCs at a decided disadvantage when competing for contracts with MNCs from other countries.

In 1988, the Congress directed the Executive Branch to commence negotiations in the Organization of Economic Cooperation and Development (OECD) to obtain the agreement of the United States’ major trading partners to enact legislation similar to the FCPA. In 1997, almost ten years later, the U. S. and thirty-three other countries signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United States ratified this Convention and enacted implementing legislation in 1998 (DOJ 2004).

All EU member states have adopted the convention and have enacted the necessary domestic legislation. The convention came into force in France in September 2000, where it is now an offense to propose “offers, promises, gifts, presents or advantages of any kind whatsoever at any time, either directly or indirectly” to a foreign public official, or to consent to a solicitation from a foreign public official. The offense is punishable by imprisonment of up to 10 years and a maximum fine of 1-5 million francs and applies to offences committed in France and abroad (Brown, 2003). This is especially significant because OECD member countries are home to about 90% of the world’s MNCs. Furthermore, with the addition of countries, such as Argentina, Brazil, and Chile, the percentage of MNCs covered is even higher (Avi-Yonah, 2003).

Even within entities such as the World Bank Group and others, there are antibribery guidelines. Within the World Bank Group, entities such as the International Development Association (IDA) and the International Bank for Reconstruction and Development (IBRD), have issued anti-corruption guidelines (George 1999). The guidelines provide that, upon discovery of fraudulent or corrupt conduct by a bidder or borrower, the bank will reject the bidder’s proposal for awards, cancel the remaining portions of loans ... and debar the

borrower from future World Bank financing for a stated period of time or indefinitely (Low, 1997) The United Nations, European Union, World Trade Organization and others all have a variety of codes of conduct that address the problem of public officials accepting bribes in exchange for favorable treatment (George, 1999).

Finally, there is Transparency International, a non-government organization that is prominent in combating corruption. In 1999, TI introduced the Bribe Payers Index (BPI) as a tool to measure the propensity of companies from leading exporting countries to commit bribery in emerging markets (Kruse, 2003). The TI Bribe Payers Surveys are comprehensive studies on bribe paying in international trade (TI, 2002). This Bribe Payer Index has been a very effective measure in exposing countries that are perceived as being corrupt (George, 1999). It appears that the enactment of antibribery legislation by the United States' major trading partners, such as the OECD and others, has greatly leveled the playing field for American MNCs. However, it is the American MNCs, according to BPI, that disproportionately find themselves in violation of anti-bribery legislation when competing for international contracts.

DOJ CASES AGAINST COMPANIES

The U.S. Commerce Department estimates that between May 1994 and April 2002, the outcome of 474 contracts worth \$237 billion may have been affected by bribery. It claims US companies lost 110 of these contracts, worth Dollars 36bn (Cantan, 2003). In 2010, there were a record 74 new FCPA actions, comprising 48 U.S. Department of Justice and 26 Securities and Exchange Commission cases. That represented an 85% leap above the previous high watermark of 40 filed in 2009. Also, there was also a record number of FCPA cases resolved via deferred prosecution agreements and non-prosecution agreements (Maiden, 2011). The SEC and DOJ have shown a clear commitment to the vigorous enforcement of the FCPA.

Probably one of the most significant cases to date to be prosecuted under the FCPA has

been *United States of America v. David Kay; Douglas Murphy*, 359 F.3d 738. Kay effectively broadened the reach of the DOJ and SEC in prosecuting cases under the FCPA. Defendants Kay and Murphy were indicted under the FCPA for illicit payments to foreign officials for the purpose of avoiding substantial portions of customs duties and sales taxes. Even though no clear business nexus had been established by the government, the Court held that such bribes as those alleged in Kay could, but do not necessarily come within the ambit of the statute. The case was remanded for the government to "allege more specific facts regarding the intent element of an FCPA crime that requires the defendant to intend for the foreign official's anticipated conduct in consideration of a bribe, hereafter, the 'quid pro quo' to produce an anticipated result here, diminution of duties and taxes that would assist or is meant to assist in obtaining or retaining business hereafter, the 'business nexus element.'" Through Kay, the 5th Circuit Court rejected the argument that the FCPA's reach is limited solely to obtaining or retaining government contracts. Thus, any payment to a foreign official that provides a company with a competitive advantage for any business could violate the FCPA (Parker, 2004).

In *United States v. Lockheed*, charges were brought against Lockheed under the FCPA. The company's vice-presidents paid \$1 million to an Egyptian politician to induce her to influence an order for military cargo planes. The aircraft manufacturer pleaded guilty to conspiracy to violate the FCPA anti-bribery provisions. As a result, Lockheed was fined \$21.8 million and ordered to make a \$3 million civil settlement. The vice-president also pleaded guilty and was fined \$125,000 with 18 months imprisonment. As a result of the violation, Lockheed had its export license suspended and that was probably the most financially damaging penalty of all. As with Lockheed, large fines, exclusion from the public contract and possible withdrawal of export privileges is seen as an active deterrent to other US companies with foreign projects (Brown, 2003).

In *SEC v. Montedison*, a very significant case which demonstrates the widening scope of

SEC jurisdiction over FCPA violations. The SEC asserted jurisdiction over Montedison, a foreign company headquartered in Italy, in regard to bribes paid abroad. The SEC claimed jurisdiction on the basis that Montedison traded its securities (ADR's) on the U.S. stock exchange; which is a clear shift in SEC policy from its former focus on domestic companies. This suggests that the FCPA can reach foreign agents and employees of domestic concerns, and U.S. nationals living anywhere in the world who have very little contact with the U.S. (Perkel, 2003).

The related cases of, *In the Matter of David Gore and SEC v. Triton Energy Corporation*, illustrates the serious ramifications that can exist for top levels of management that have access to information regarding possible FCPA violations committed by their employees and fail to investigate and/or rectify the potential violation. The cases concerned a number of alleged violations of both the FCPA bribery and accounting provisions by Triton Energy Corporation in Indonesia, its officers and its employees. In each instance an improper payment was made to secure concessions from various government agencies in Indonesia, and false documentation was prepared to shield the nature of the payment. The SEC found that defendants Triton and Murphy violated Section 13(b)(2)(A) by creating and recording false entries in Triton's books. (Lacey, 1999).

The recent Halliburton investigation is another example of the DOJ and the SEC's commitment to vigorous pursuit of violators. The U.S. government is formally investigating payments made by a Halliburton Company joint venture to the Nigerian government in connection with a liquefied natural gas plant in Nigeria for possible FCPA violations (Reueters Limited, 2004). The allegations center around a \$4 billion Nigerian liquefied natural gas plant built in the 1990s by Halliburton and other partners. The payments were allegedly made to Nigerian officials (AP, 2004). The financial implications of Halliburton's alleged actions could quite possibly be huge. As with Lockheed, Halliburton can possibly face hefty fines and possible suspension of export privileges.

FCPA IMPLICATIONS ON MNCs

The FCPA, among other factors, has played a major role in changing international attitudes and policies towards business corruption by heightening awareness of the devastating social, economic, and political effects of business corruption. Its twenty-year history of successes and failures has helped to shape current global attitudes towards business corruption (Lacey, 1999). One of the key reasons that the FCPA has been a significant factor in changing attitudes is that it has demonstrated an alternative approach to eradicating business corruption, by punishing the giver of bribes, rather than the recipient (Lacey, 1999).

The DOJ Principles explain that the likelihood of a corporation facing criminal prosecution depends upon, among other things: 1) pervasiveness of criminal conduct within the corporation, including the extent to which central management was aware of and/or condoned any wrongdoing; 2) the corporation's history of criminal conduct; 3) the corporation's timely and voluntary disclosure of wrongdoing and willingness to cooperate; 4) the existence and adequacy of compliance programs; and 5) the corporation's remedial efforts, including discipline of responsible individuals. Taken together, these factors make it clear that central management must quickly come to grips with any criminal violation, and that it will ultimately bear the responsibility for the failure to do so (Raphaelson, 2003).

The combination of widely dispersed, often decentralized operations and variations among the legal and cultural norms in which the corporations do business creates a significant risk that material violations of U.S. laws may not be reported to central management, and may therefore escape remediation (Raphaelson, 2003). Sales representatives/distributors: even with an explicit disclaimer of any agency relationship -- does not provide a shield from liability under the FCPA or local law. As a result, doing business through agents, sales representatives, consultants, and distributors requires due diligence in their selection and oversight. Compensation arrangements based

on a percentage of the value of a closed deal receive close scrutiny from enforcement agencies and should therefore be reviewed and approved for compliance.

To avoid potential violations, all agents should provide representations and warranties that will: 1) adhere to the FCPA, local law, and to company policy; 2) that they will maintain proper books and records concerning their expenses and; 3) allow the company to review those records upon request. Furthermore, official company policy should prohibit the retention of any agents who are foreign-government officials or who have close ties (particularly familial ties) to a foreign government (Raphaelson, 2003).

If a business unit has reason to believe that either corporate policy or FCPA/OECD has been violated, swift remedial action is necessary. It is prudent to have a mechanism for rapid consultation between local and central management and to use it before launching an investigation from the U.S. This may also include local management, including the local legal team, which speaks the language, knows the people, knows the customs, and will have easy access to witnesses and documents, as well as to forensic resources (Raphaelson, 2003).

On reprieve for a MNC who thinks they might be in violation is the availability of advisory opinions. In September 1992, the DOJ issued a revised advisory opinion procedure enabling issuers and domestic concerns to obtain an official government opinion as to whether prosecution under the FCPA would result from proposed activities. A concerned MNC can use the DOJ procedure to submit prospective conduct for review. If upon request, the government determines that a party's specified

activities conform to DOJ's enforcement policy, any subsequent action brought under the anti-bribery provisions is subject to a rebuttal presumption that the party's conduct complies with the FCPA (Colton, 2001).

Although each company's response to specific potential bribery issues must be carefully tailored to fit its particular circumstances, the following seven steps should be relevant to most situations: 1) educate employees and convey the proper "tone at the top"; 2) designate an FCPA compliance officer; 3) establish and implement effective monitoring mechanisms; 4) require central review of all foreign consulting and agency arrangements; 5) exercise particular caution when dealing in high risk countries; 6) assess FCPA compliance obligations with regard to foreign subsidiaries and joint venture partners; 7) assure the adequacy of financial reporting and internal control systems. With these points in mind, companies can assess and reduce their exposure to potential FCPA problems. Prompt attention to these issues provides the best chance to avoid becoming an example of the United States' high profile commitment to eradicating bribery on a worldwide scale (FFHSJ, 1996).

CONCLUSION

The FCPA, among other factors, has played a major role in changing international attitudes and policies towards business corruption by heightening awareness of the devastating social, economic, and political effects of business corruption. Its twenty-year history of successes and failures has helped to shape current global attitudes towards business corruption (Lacey, 1999).

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