Bribery crackdown

How to ensure your company complies with anti-corruption laws

INTERVIEWED BY ROGER VOZAR

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It's tempting to do whatever it takes to generate more business, but global companies are increasingly at risk of getting caught if an employee violates the Foreign Corrupt Practices Act (FCPA).

"There has been a tremendous increase in the amount of enforcement from the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) in the past five years," says Luis M. Alcalde, of counsel at Kegler, Brown, Hill & Ritter. "In addition to that greater emphasis, the Sarbanes-Oxley Act of 2002 and whistleblower legislation expanded the ability to bring illegal activities within companies to the forefront."

The FCPA, passed in 1977, was prompted by widespread bribery of foreign officials by U.S. companies and is intended to level the playing field and let market forces dictate business contracts, Alcalde says.

"It really addresses two pillars of our capitalist system — free markets and transparency. When companies win contracts through corruption, it's a distortion of the marketplace. The best services and best prices should win the battle," he says.

Smart Business spoke with Alcalde about anti-corruption laws, and what companies should do to comply with laws and avoid the significant financial sanctions and legal fees that could result from violations.

How do you know what is and isn't acceptable?

Most people can agree it constitutes bribery when a company pays $20,000 to a government official to make sure that it gets a contract. Where it gets difficult is when dealing with a culture where personal relationships are important and everyone's wining and dining public officials. The FCPA does not have a de minimus rule, so the central issue becomes the intent behind the gift or entertainment.

What steps should companies take to stay out of trouble with the FCPA?

The most important step is to instill a genuine belief system throughout the organization, starting at the top with the board of directors, to pursue business in an ethical manner. It's not enough to simply have a code of ethics, all employees must understand and accept that in some cultures and situations being ethical might result in some loss of business.

Secondly, develop a process of internal controls and due diligence that covers how business will be conducted and how financials will be recorded. This includes everything from purchasing supplies, advertising expenses, to hiring consultants, etc. Have a protocol that lays out the criteria and documentation that is expected — information about the vendor's financials, time in business and ownership, as well as getting prices and at least two or three bids. Be able to monitor these transactions and conduct audits.

Finally, you have to do something to punish the wrongdoer when a violation or risk is detected. If you find out a top salesperson was paying bribes to public officials, you have to take action against the wrongdoer and possibly disclose the wrongdoing or face worse anti-bribery sanctions if caught.

Can you provide examples of the costs of FCPA-related settlements?

Siemens was one of the more famous, it had an $800 million settlement in 2008. In 2011, Alcatel-Lucent settled for $137.4 million with the DOJ and SEC. Wal-Mart is involved in a bribery investigation in Mexico and is reported to be paying an average of $600,000 a day in legal fees to deal with the issue.

After the government imposes criminal penalties, companies could also face civil penalties. It looks great when a company shows a 12 percent increase in profits in China, but not if it turns out that was based on bribes to government officials. Those officials are going to jail and the contracts are voided. Then shareholders are angry that the company lied and shares lose value, so the company will face shareholder lawsuits.

Companies must ensure legal compliance even if it means a short-term loss of business. The price of getting caught is too high. Operating ethically is always the best long-term strategy. Walking away from a deal that compromises the company is the only smart business. ●