FOREIGN CORRUPT PRACTICES
ACT OF 1977

ANTIBRIBERY PROVISIONS
• DEPARTMENT OF JUSTICE

ACCOUNTING PROVISIONS
• SECURITIES AND EXCHANGE COMMISSION
• DOJ / CRIMINAL
  • KNOWINGLY: CIRCUMVENT / FAIL TO IMPLEMENT / FALSIFY

ACCOUNTING PROVISIONS

ISSUERS
SECURITES LISTED IN U.S.

BOOKS AND RECORDS THAT ACCURATELY REFLECT TRANSACTIONS FAIRLY

MAINTAIN ADEQUATE SYSTEM OF INTERNAL ACCOUNTING CONTROLS
WHO MUST COMPLY?

ISSUERS

DOMESTIC CONCERNS
- FOREIGN SUBSIDIARIES?
  - AUTHORIZED OR DIRECTED
- FOREIGN COMPANIES AND NATIONALS
  - CAUSING CORRUPT PAYMENT TO TAKE PLACE IN U.S.

ELEMENTS OF ANTI-BRIBERY PROHIBITION

PAYMENT:
OFFER AUTHORIZATION PROMISE

RECIPIENT:
- FOREIGN OR INTERNATIONAL ORGANIZATION OFFICIAL
- FOREIGN POLITICAL PARTY OR OFFICIAL
- FOREIGN POLITICAL CANDIDATE
- ANY PERSON, WHILE KNOWING IT WILL BE PASSED ON
ELEMENTS OF ANTIBRIBERY PROHIBITION (CONTINUED)

MADE WITH A CORRUPT INTENT

PURPOSE –
  • TO INFLUENCE OFFICIAL ACT OR DECISION
  • TO INDUCE OFFICIAL ACTION OR OMISSION IN VIOLATION OF LAWFUL DUTY
  • TO INDUCE OFFICIAL TO USE INFLUENCE

IN ORDER TO “OBTAIN OR RETAIN” BUSINESS OR TO DIRECT IT TO ANY PERSON

U.S. v. KAY, 359 F.3d 758 (5th Cir. 2004)

REduced SALES TAXES AND CUSTOMS DUTIES
PAYMENTS TO THIRD PERSONS

“KNOWLEDGE”

UNTIL 1988: “REASON TO KNOW”

“AWARE” OR “FIRM BELIEF” THAT RESULT IS “SUBSTANTIALLY CERTAIN TO OCCUR”

LEGISLATIVE HISTORY:

“CONSCIOUS DISREGARD”

“WILLFUL BLINDESS”

“DELIBERATE IGNORANCE”

CIRCUMSTANCES / “HIGH PROBABILITY”

GREASE PAYMENTS

• FACILITATING OR EXPEDITING “ROUTINE GOVERNMENT ACTION”

AFFIRMATIVE DEFENSES

• PERMITTED BY WRITTEN LAWS OF OFFICIAL’S COUNTRY

• REIMBURSEMENT FOR DEMONSTRATION VISIT EXPENSES
SOME RESOURCES

FOREIGN CORRUPT PRACTICES ACT REPORTER
BUSINESS LAWS, INC.
11630 CHILLCOTHE ROAD
CHESTERLAND, OH 44026
T: 440-729-7996

TRADE COMPLIANCE CENTER, U.S. DEPT. OF COMMERCE
WWW.TCC.DOC.GOV

TRANSPARENCY INTERNATIONAL
WWW.TRANSPARENCY.COM

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Harris, Wiltshire & Grannis LLP
2005