

**Anti-Corruption Compliance and Disputes:
Practical Insight and
Considerations**

By Oleh Marchenko

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Why Important?

- (1) Criminal penalties
- (2) Fines
- (3) Civil and punitive damages
- (4) Antitrust penalties and seizure of profits
- (5) Termination of business relations and contracts
- (6) Extortion
- (7) Harm to reputation
- (8) Negative effect on shares prices and investor relations

Certain Facts

- (1) FCPA Penalties -- 4 X higher for non-US compared to US companies
- (2) Non-US companies traded on NY Stock Exchange or paying bribes outside the US in the US Dollar -- US FCPA compliance and liability
- (3) 10 top FCPA cases (8 out of 10 are non-US) –
 - Siemens (Germany): \$ 800 M
 - Alstom (France): \$ 772 M
 - KBR / Halliburton (US): \$ 579 M
 - BAE (UK): \$ 400 M
 - Total SA (France): \$ 398 M
 - Alcoa (US): \$ 384 M
 - Snamprogetti / ENI (NL / Italy): \$ 365 M
 - Technip SA (France): \$ 338 M
 - JGC Corporation (Japan): \$ 218 M
 - Daimler AG (Germany): \$ 185 M

Global Impact

- (1) It all started with FCPA (USA), now other join the club, including the UK
- (2) China -- Recent fine of GlaxoSmithKline by China for USD 500 M for illegal payments to doctors, including travel and entertainment expenses
- (3) Financial Times: “Bayer under Investigation in China”
<http://www.ft.com/cms/s/0/753daff6-1c4b-11e3-a8a3-00144feab7de.html#axzz3pn3F1dEz>
- (4) Fraud or bribery case (headlines) by a multinational in a single country are likely to cause investigations, prosecutions, penalties and damages globally

What Is Prohibited?

- (1) Giving or promising
- (2) Bribes -- anything of value
- (3) To public officials -- in some countries, e.g. US and UK, also to foreign public officials; in some countries, e.g. Ukraine, also to company's directors
- (4) Directly or indirectly -- e.g. through employees, partners or distributors
- (5) With improper purpose -- to obtain or retain business

What Is Bribe?

- (1) Bribes -- anything of value and improper purpose
- (2) Facilitation payments -- permitted in some jurisdictions (e.g. the US), not in Ukraine
- (3) Grey area cases (e.g. entertainment and travel expenses)

What is at Stake: Criminal and Financial Liability

- (1) Who enforces anti-corruption law?
- (2) Role of whistle-blowers
- (3) Criminal and financial liability
 - ADM paid \$ 54.3 M to settle tax refund bribes in Ukraine by its local sub (Toepfer)
 - March 2015 -- Greece indicts 64 for Siemens bribes (Greeks and Germans)



Anti-Corruption Law Enforcement and Private Actions

- (1) Bribes as a cause for private actions -- e.g. damages and punitive damages (double or triple damages); shareholders claims; restitution claims
- (2) Terminations of business relations and contracts
- (3) Antitrust actions
- (4) Investment arbitration disputes

Claims for Damages

- (1) Bill and Melinda Gates Foundation sues Petrobras and PwC -- the lawsuit is filed in NY for “damages” related to investments into Petrobras (Petrobras gave around \$ 2 BLN in bribes). PwC knew but looked the other way



Investment Arbitrations

- (1) Siemens A.G. vs. Argentina -- In 2007 Siemens won a large arbitral award from Argentina. However, about a year later, Siemens became the subject of US FCPA investigation. U.S court filings revealed bribery in the Siemens-Argentina deal. In response, Argentina filed for an annulment of the arbitral award. Siemens agreed to cease attempts at recovering.

SIEMENS



THANK YOU!

