

Combating Corruption in International Business

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Legal framework

International agreements:

- OECD Convention on Combating Bribery of Foreign Public Officials of 1997
- Council of Europe Criminal law and Civil law Convention, 1999
- UN Convention against corruption of December 2003
- ICC Rules on Combating Corruption (1977, 1996, 1999, 2005, 2011)

Prohibited practices

Bribery

To offer, promise or grant an undue benefit to a member of a judicial or other authority, a civil servant, an officially appointed expert, translator or interpreter, and arbitrator or a member of the army, in favour of such a person or a third party, for the execution or omission of an act that is related to his official activity and which is contrary to his duties or depend on his discretionary powers.

Prohibited practices

Extortion or Solicitation

Demanding of a bribe, whether or not coupled with a threat if the demand is refused. Enterprises will oppose any attempt of extortion or solicitation and are encouraged to report such attempts through available formal or informal reporting mechanisms, unless such reporting is deemed to be counter-productive under the circumstances.

Prohibited practices

Trading in Influence

Offering or solicitation of an undue advantage in order to exert an improper, real, or supposed influence with a view of obtaining from a public official an undue advantage for the original instigator of the act or for any other person.

Intermediaries

- No established definition of intermediaries in the context of foreign bribery cases
- A person who is put in contact with or in between two or more trading parties.
- In the business context, a conduit for goods or services offered by a supplier to a consumer.

Intermediaries

ICC rules on Combating Bribery:

Third Parties subject to the control or determining influence of the Enterprise, including but not limited to agents, business development consultants, sales representatives, customs agents, general consultants, resellers, subcontractors, franchisees, lawyers, accountants or similar intermediaries, acting on the Enterprise's behalf in connection with marketing or sales, the negotiation of contracts, the obtaining of licenses, permits or other authorizations, or any actions that benefit the Enterprise or as subcontractors in the supply chain.

Responsability of corporations for intermediaries

- UN Convention against corruption - bribery of a foreign public official covers undue advantages which are given *directly or indirectly* to a foreign public official.
- OECD Convention on Combating Bribery of Foreign Public Officials - bribery of a foreign public official covers undue advantages which are given *directly or through intermediaries*, to a foreign public official.

Basic due diligence rules when contracting with an agent

- A company must clearly articulate its business needs.
- A company should insure that the following requirements are met:
 - ▶ Acceptable structure as a framework for the relationship.
 - ▶ The required qualifications and experience in the required field.
 - ▶ Justify his added value compared to the principal's own employees.
 - ▶ Provide references of his work and qualifications.

Basic due diligence rules when contracting with an agent

- A company should insure that the following requirements are met (2):
 - ▶ Have his own anti-corruption policy.
 - ▶ Commit to the company' anti-corruption policy.
 - ▶ Written contract for a fixed term with detailed description of the work/services to be provided and the remuneration.
 - ▶ Remuneration should be appropriate and justifiable with respect to the services rendered.
 - ▶ Payments only through bank transfers on an account in his name.

Requirements imposed upon intermediaries

Corporations should:

- instruct them neither to engage nor to tolerate that they engage in any act of corruption;
- not use them as a conduit for any corrupt practice;
- hire them only to the extent appropriate for the regular conduct of the company's business; and
- not pay them more than an appropriate remuneration for their legitimate services.

Red flags

Risk of corruption exists when:

- Excessive or disproportionate commission payment is requested.
- Payments are requested such that the money cannot be traced.
- The accounts or bills for services rendered by the intermediary fail to specify in any detail.
- The intermediary has relatives in government positions or the intermediary is recommended by a public official.

Red flags

Risk of corruption exists when (2):

- Refusal of the agent to disclose owners, partners or principals.
- The agent has little expertise in the particular industry where he seeks to represent the corporation, or is ignorant or indifferent to local rules and laws and regulations.
- His business seems under-staffed, ill equipped, inconveniently located to support the proposed transaction or is insolvent.

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