Bribery and Corruption

The FCPA, UK Bribery Act, and Other Anti-Corruption Measures
Introduction

- The FCPA and the UK Bribery Act are the two premier anti-corruption laws that have international reach.
- These laws criminalize the bribery of foreign government officials.
- The UK Bribery Act has a broader scope than the FCPA, also prohibiting commercial bribery.
- Many businesses outside the United States and United Kingdom are subject to these laws.
The FCPA

- Enforcement authority
- Two principal components:
  - Accounting provisions
  - Anti-bribery provisions

The Foreign Corrupt Practices Act of 1977

15 U.S.C. §§ 78dd-1, 78dd-2, 78dd-3, 78m
The FCPA

- Accounting provisions:
  - Books and records provisions
  - Internal controls
  - Penalties
The FCPA

- Anti-bribery provisions:
  - Five elements of a violation
  - Third-party liability
  - Penalties
  - Facilitating payments
  - Affirmative defenses
  - Key facts about the anti-bribery provisions
The UK Bribery Act 2010

- Primarily designed to tighten the United Kingdom’s regulatory framework
- Provides for broad jurisdiction over companies and individuals operating inside and outside the United Kingdom
- Act’s passage demonstrates a trend toward more aggressive enforcement of anti-bribery laws
The UK Bribery Act 2010

- The Bribery Act defines *bribery* as a financial or other advantage offered, promised, or given to another person to induce or reward that person for the improper performance of a function or activity.
The UK Bribery Act 2010

- Jurisdiction:
  - Broad jurisdiction for acts of corruption when any part of the offense occurs in the United Kingdom
  - Liability for acts committed outside the United Kingdom by individuals and entities with a close connection to the United Kingdom
The UK Bribery Act 2010

- **Jurisdiction:**
  - Entities with a close connection to the United Kingdom include:
    - British citizens
    - Overseas citizens
    - Overseas territories citizens
    - Any person declared a British subject under the 1981 British Nationality Act
    - Individuals who normally reside in the United Kingdom
    - A body incorporated under the law of any part of the United Kingdom
    - Foreign companies with offices in the United Kingdom (or that employ UK citizens)
The UK Bribery Act 2010

- Enforcement authority:
  - The Serious Fraud Office (SFO)
  - The Crown Prosecution Service (CPS)
  - The Financial Conduct Authority (FCA)
The UK Bribery Act 2010

- Offenses fall under three categories:
  - General commercial bribery offenses
  - Bribing foreign public officials
  - Failure to prevent bribery
The UK Bribery Act 2010

- Prosecution and penalties:
  - An individual convicted of either general bribery or the bribery of a foreign public official faces a penalty of up to ten years’ imprisonment and a fine.
  - A company convicted of either general bribery or the bribery of a foreign public official faces a fine.
  - The failure to prevent an act of bribery by an associate party is also punishable by a fine.
  - There are no upper limits on the fines that may be imposed.
UK Ministry of Justice: Six Key Principles

- Anti-corruption procedures proportional to the risk
- Top-level commitment
- Risk assessment
- Due diligence
- Communication, including training
- Monitoring and review
# FCPA Versus UK Bribery Act

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<th>Provision</th>
<th>FCPA</th>
<th>Bribery Act</th>
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<tr>
<td>Bribery of private entities</td>
<td>Applies to bribery of foreign government officials</td>
<td>Prohibits bribes paid to any person (not limited to foreign officials)</td>
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<td>Corrupt intent</td>
<td>Requires corrupt intent</td>
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<td>Corporate strict liability</td>
<td>Bribery charges must prove intent or negligence</td>
<td>Strict corporate liability offense for the failure to prevent bribery</td>
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<td>Facilitating payments</td>
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<td>Criminal penalties</td>
<td>For individuals, up to five years’ imprisonment and fines up to $250,000 per violation; for entities, fines up to $2 million</td>
<td>For individuals, up to ten years’ imprisonment and potentially unlimited fines; for entities, potentially unlimited fines</td>
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Other Anti-Corruption Initiatives and Laws

- OECD Convention on Combating Bribery
- OECD’s *Guidelines for Multinational Enterprises*
- OECD’s *Good Practice Guidance*
- United Nations Convention Against Corruption
- Partnering Against Corruption Initiative (PACI)—Principles for Countering Corruption
PACI Principles for Countering Corruption

1. Set the **tone at the top** through a visible and active leadership commitment to zero tolerance of corruption in all its forms.

2. Build an internal **culture of integrity** that encourages, recognizes, and provides positive support for ethical conduct.

3. Foster **transparency** throughout our organizations and in our interactions with our stakeholders.
PACI Principles for Countering Corruption

4. **Comply** with applicable laws and regulations in the jurisdictions where we operate and transact business.

5. Encourage our **business partners** to uphold the same ethical standards that we observe.

6. **Engage** in PACI and other collective action initiatives to bring a coordinated response to the challenge of corruption, whether in specific geographies or industry sectors.
Other Anti-Corruption Initiatives and Laws

- Inter-American Convention Against Corruption
- EU Convention on the Fight Against Corruption
- Council of Europe Criminal Law Convention on Corruption
- African Union Convention on Preventing and Combating Corruption
Other Anti-Corruption Initiatives and Laws

- Country-specific anti-corruption legislation:
  - Australia
  - China
  - France
  - Germany
  - Hong Kong
  - Indonesia
  - Japan
The International Nature of Corruption Investigations

- Cooperation among government agencies across international borders is increasingly evident in the global fight against corruption.
- Example: HP investigation