

The Top 5 FCPA Fallacies

In 2010, the number of federal prosecutions for violation of the Foreign Corrupt Practices Act (FCPA) more than quadrupled. The Department of Justice (DOJ) set a new record for fines and penalties – collecting nearly \$1B. The FBI has announced that FCPA investigations are one of its highest priorities, which means that these trends will only accelerate.

If you think your organization is safe from FCPA liability, you may need to think again. In a recently published article by CFO.com, a list of 5 commonly held misconceptions about the FCPA were identified.

1. OUR FOREIGN SALES ARE TOO IMMATERIAL TO CREATE FCPA RISK.

The FCPA applies to U.S. residents, citizens, and nationals and most organizations based in the United States or subject to U.S. securities laws and reporting requirements — no matter the size or revenue. And even the smallest improper payment or benefit can violate the FCPA, causing an investigation of your organization and potential fines and penalties.

2. OUR FOREIGN CUSTOMERS ARE NOT GOVERNMENT DEPARTMENTS/AGENCIES.

The DOJ has interpreted the FCPA's anti-bribery provisions broadly enough to cover improper payments made to not only foreign officials, but even to *state-run organizations and political parties*.

3. OUR EMPLOYEES NEVER INTERACT DIRECTLY WITH ANYONE FROM FOREIGN GOVERNMENTS.

Your employees may not interact directly with foreign governments, but your third parties, such as agents, consultants, suppliers, and business partners, may. Illegal conduct by third-parties creates massive liability for your organization under the FCPA.

4. WE'RE BETTER OFF NOT KNOWING WHAT OUR FOREIGN PERSONNEL AND AGENTS DO TO GET BUSINESS DONE.

While acting with a "corrupt motive" is a necessary element of a FCPA violation, the definition of a corrupt motive is vague. Under the FCPA, organizations are liable for the actions of third-party partners if the organization knows, *or should have known*, the third parties were violating the law.

5. EVERYBODY ELSE DOES IT AND NEVER GETS CAUGHT.

As shown from the record high FCPA fines and penalties and increased enforcement efforts, organizations that think they can violate the FCPA and get away with it are sadly mistaken. Penalties are significant, and both the organization and its employees are liable. It's just not worth the gamble.

PREVENT FCPA VIOLATIONS & ESTABLISH POWERFUL LEGAL DEFENSES

Now that you know the risks, prevent FCPA violations and establish powerful legal defenses with ELT's FCPA online training course. As part of our Anti-Bribery & Corruption Series, ELT's FCPA course provides your workforce with guidance about the FCPA as well as your organization's policies and reporting procedures.

Learn more about FCPA training and ELT's Anti-Bribery & Corruption Series at www.elt.com

“In this era of global commerce, the FBI is committed to curbing corruption...”

Kevin Perkins
Assistant Director,
**Criminal
Investigative
Division, FBI**




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