

Doing Business with Governments

The Foreign Corrupt Practices Act
The UK Anti-Bribery Act



Informatica™

What is the Foreign Corrupt Practices Act? ("FCPA")

- FCPA - Passed into law in the United States in 1977
- All U.S. based companies are subject to the FCPA
- The FCPA prohibits payments to foreign officials for the purpose of obtaining or keeping business or directing business to individuals or companies.

What is the UK Anti-Bribery Act? (“UKABL”)

- UKABL - Went in to effect on July 1, 2010
- All U.K. based companies and companies that have operations or conduct business in the U.K. are subject to the UKABL
- Unlike the FCPA, the UKABL law applies to **both public and private sector** payments, gifts or gratuities that are intended to bring about an unfair commercial advantage.

5 Questions under the FCPA

1. Who does the law cover?
2. Who is a Government Recipient
3. What is “Corrupt Intent”?
4. What is a “Payment”?
5. What is the “Business Purpose”?

1. Who Does the FCPA Cover?

- The FCPA applies to any individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm.
- **Individuals** and firms may also be penalized if they order, authorize, or assist someone else to violate the law or if they conspire to violate the law.
- You as an Informatica employee may be held liable for a payment made by you or someone else - a consultant or local business development person, a lobbyist, etc.- operating outside the United States, using money from foreign bank accounts, and without any further involvement by persons located within the United States.
- FCPA also carries substantial penalties for the Company

2. What is “Corrupt Intent?”

- The payment must be intended to induce the recipient, usually a government official, to use or misuse his or her official position to direct business wrongfully to the payer or to any other person or company.
- The FCPA does not require that a corrupt act actually succeed . *The mere “offer” or “promise” of a corrupt payment can constitute a violation of the statute.*

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3. What is a Payment?

- The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money...
- or “anything of value.”
- Ballgame tickets, concert tickets, dinners, gifts to children or spouses of officials, green fees at golf courses, bottles of wine, etc.
- An illegal “payment” does not have to be a sum of money.
- THIRD PARTY PAYMENTS: The FCPA prohibits corrupt payments through intermediaries.
It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official.



What is a Payment Cont.

- Beware of “brokers” and “business consultants” that offer to help you to secure a deal.
- You may not consciously disregard the fact that money is going to influence a public official and deliberate ignorance of that fact will not help you to avoid prosecution. The law punishes you if you knew “or reasonably should have known” that the payment was actually a bribe.

4. Who is a Government Recipient?

- A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity.
- A member of a royal family, a candidate for office, a member of a legislative body, or an official of a state-owned business enterprise could be considered a "foreign official."
- The FCPA applies to payments to *any* public official, regardless of rank or position.

Who is a Government Recipient Cont.

- The law applies to government owned businesses too, such as airlines, telecommunications companies, utilities, etc.
- The payment need not go directly to a government office.
- IMPORTANT-The FCPA focuses on the purpose of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment.

5. What is the Business Purpose Test

- The FCPA prohibits payments made in order to assist the firm in *obtaining or retaining business* for or with, or *directing business* to, any person or any business.
- The U.S. Department of Justice interprets "obtaining or retaining business" very broadly, such that the term encompasses more than the mere award or renewal of a contract. It should be noted that the business to be obtained or retained does *not* need to be with a foreign government or foreign government instrumentality. If you bribe an official who then uses his influence over a private company, you have violated the law.
- EXAMPLE- you supply a payment to a government official who uses his\her influence over a state supported airline or utility company to direct business to Informatica. This is illegal!!

The UK Anti-Bribery Law

- Unlike the FCPA, this new law applies to gifts or payments that are provided **to private persons and not government officials.**
- The law does not specify a monetary limit up to which a person can offer a gift without being criminally liable.
- It is important to understand that under the new law, a person that works for a company like Informatica, which is headquartered in the U.S. but does business in the UK, could be prosecuted under this new law for bribes that occur in countries other than the U.S. or the U.K.- In other words, your conduct in foreign countries could be prosecuted in England.

Under the Law, Can we still provide for Hospitality? Promos? Marketing?

- The answer is yes. The new law does not criminalize reasonable and legitimate expenditures on hospitality, marketing or promotions.
- However, the British government will not tolerate hospitality as a “cover” for a bribe. The government will examine how extravagant the expenditure is, the context or method of how it is provided, and the level of influence that the person receiving it had on the ultimate business decision.

Penalties

- FOR UKABL:
 - Ten years in jail for individuals
 - Unlimited monetary fine for the company
- FOR FCPA:
 - Fine of \$250,000 (or twice the amount of your profit)
 - Five years in jail
- COMPANIES CAN BE FINED TENS OF MILLIONS OF DOLLARS

Things To Watch Out For

1. A government official or corporate official tells you to make a payment via a third party intermediary or agent.
2. You are asked to provide a payment to person associated with a bid or contract renewal but this person does not appear to be doing any actual work.
3. You are asked to pay for an unusually expensive dinner or some other form of entertainment.
4. You are asked to cover the travel expenses of a government official who wants to come to San Francisco to meet our senior management or travel to a desired location for training or to see a demo .

A Few More Things to Watch Out For

5. You are asked to pay a “consulting fee” to a current or former government official who tells you that he or she can help you secure a deal because he or she has special knowledge or special relationships within the government.
6. You are asked to deal with an “agent” or a “consultant” who appears to have no actual industry knowledge but claims that they can help you to secure business.
7. You are asked to backdate a contract.
8. You are informed late in the sales or contract renewal process that there is special fee or special tax that Informatica must pay.

And Just a few more things...

9. You are told that it is “customary” to supply a small gift to a government or corporate official. (The fact that bribery is customary doesn’t make it legal).
10. You are asked to provide for an elaborate and expensive hotel suite with fine dining and high quality alcohol for an executive of a company that we want to do business with.
11. You are told to bring a gift of significant value to a business meeting with prospective customer’s management team because such gifts are “customary”.
12. You are asked to provide a “loan”.
13. You are asked to help secure an official’s child’s admittance to a school.
14. It is suggested to you that a contribution to a political party or a candidates campaign might be a good idea.
15. You ask for a receipt and none is forthcoming.
16. You are asked to make a “charitable” contribution.

Recent News

- A recent undercover Foreign Corrupt Practices Act (FCPA) investigation conducted by the U.S. Department of Justice culminated with the indictments of nearly two dozen corporate executives and lower level employees and is a clear sign of the priority the federal government has placed on enforcing the FCPA.
- Announced by the U.S. Department of Justice, the indictments were obtained after an investigation led by the Federal Bureau of Investigation (FBI) that included an undercover sting operation. It was the first time the federal government conducted a large operation by using undercover law enforcement agents for FCPA purposes. The arrests, according to DOJ's press release, represent "the largest single investigation and prosecution against individuals in the history of DOJ's FCPA enforcement."
- "With this Indictment, the Justice Department has sent a strong signal that individuals, not just corporations, are now targets and the government will use any and all means available to prosecute FCPA cases."
- Penalties ARE applicable to individual employees- Jail, fines, etc.

May 2012

- Two citizens of the United Kingdom, Jeffrey Tesler and Wojciech Chodan, were extradited to the U.S. and indicted on one count of conspiracy to violate the FCPA and ten counts of violating the FCPA.

Said a U.S. Government Official...

“The DOJ and SEC are sending out a loud and clear message that they will seek harsh punishments for anyone involved in bribing foreign officials. Our message recognizes that prosecuting only companies does not achieve the desired result, as companies can pay fines as a cost of doing business. Only the threat of individuals spending time in federal penitentiaries will squelch the tide of corruption”.

Violating the FCPA can result in huge civil and criminal fines, civil suits, and global embarrassment. A senior government official recently warned corporations around the world that “any company that seeks to put greed ahead of the law by making illegal payments to win business should beware that [law enforcement agencies] are working vigorously across borders to detect and punish such illicit conduct.” Their work has paid off. The past two years have been two of the biggest in FCPA enforcement history, both in the number of prosecutions and strength of penalties. The SEC and DOJ are “waging the war” against corrupt business practices with big weapons and jaw-dropping fines: Siemens AG forked over \$800 million for civil and criminal fines; Halliburton and Kellogg Brown & Root (KBR) disgorged \$177 million to the SEC; KBR delivered another \$402 million to the DOJ; and Novo Nordisk A/S coughed up \$19 million for fines. The list goes on, and the message is consistent: “FCPA violations have been and will continue to be dealt with severely by the SEC and other law enforcement agencies.”

Brazil, China, Mexico

- In 2012, Brazil initiated over 5000 investigations\prosecutions.
- Nearly one third of all FCPA actions filed in 2012 involved illegal payments in China.- Party leader Xi Jinping warned that “corruption could kill the party and ruin the country” and has vowed strict enforcement and harsh penalties.
- There are currently at least five on-going FCPA investigations of U.S. companies resulting from payment conduct in China.
- Mexican law allows for administrative penalties of up to \$10 million.
- Eli Lilly paid a fine of \$29 million arising from illegal payments made in Russia, China and Brazil.

The Consultant

- You have a big PowerCenter opportunity with a state owned airline. You are told that you should hire Mr. Black. Mr. Black is a former executive with the airline. You are told that Mr. Black is an expert on how the state and the airline conducts business, and that Mr. Black can introduce you to the right persons who will help you secure the deal. He asks for a “retainer fee” of \$10,000.00 U.S.D.
- What should you do?
- Refuse to pay?
- Ask for a detailed description of exactly what services Mr. Black will provide?
- Ask for a receipt that details his expenses and whether any of the payment is going to government employees?
- Because the money is not going to an individual who works for the government, do you even have to worry about it?

The Gift

- You are trying to close a large deal in Brazil\China\Russia etc. You are invited to a meeting that will be attended by key decision makers. You are told that one of them loves single malt scotch and you would like to present him\her with bottle costing about \$100.00U.S.D. You believe that such gifts are customary and you believe that your competitors routinely provide such gifts. You don't believe that \$100.00 is excessive. You've asked local officials if such a gift is illegal and you've been assured that its not.
- Should you buy the gift and present it at the meeting?
- Should you buy the gift but keep it under \$50.00?
- Should you ask someone else to give the gift to the recipient but make sure they know if came from you?

The Gift Part 2

- You want to sell Informatica product to a large private hospital center. The hospital is private, was not built by the government and is not run by the government. The hospital's CIO really likes a particular wine that hard to find. You find a bottle and would like to give it to her.
- Is this OK because this person is not a government employee?
- Is it possible that UK Anti-bribery law would apply to this scenario?

The Facilitation Payment

- You want to submit a bid on government contract. You are told you need to purchase a business license and also pay a small fee to cover the costs of the bid review. Everyone who submits a bid must pay these fees.
- Should you pay it?
- What if, in addition to these two small fees, you are asked to also pay a small fee to a clerical level person in a government offices who says that this fee will simply expedite the process and will get your bid in front of the decision maker a few days faster?
- Should you pay this additional fee?

The Dinner

- You are about to close a big deal with a government official. He proposes a nice dinner out with you and your wife and he and his wife and suggests an excellent high end restaurant.
- You don't want to be rude. What should you do?

INFA's POLICY- What to do when you are not sure?

- Compliance with the law is not only the law. It is INFA policy.
- INFA's POLICY IS ONE OF ZERO TOLERANCE!!!
- READ AND UNDERSTAND OUR EMPLOYEE CODE OF CONDUCT LOCATED AT:
 - <https://www.informatica.com/content/dam/informatica-com/en/docs/legal/informatica-code-of-business-conduct.pdf>
- READ AND UNDERSTAND THE PARTNER CODE OF CONDUCT LOCATED AT:
 - <https://www.informatica.com/content/dam/informatica-com/en/docs/legal/informatica-partner-code-of-conduct.pdf>
- You are required to certify your compliance with the FCPA and other applicable laws.
- NON-COMPLIANCE CAN LEAD TO TERMINATION AND PROSECUTION. IN OTHER WORDS, IF YOU VIOLATE THE LAW, YOU WILL BE FIRED AND THE MATTER WILL BE REFERRED TO THE AUTHORITIES FOR PROSECUTION.
- False certification may lead to termination of agreement or employment
- Call the Informatica legal representative in your region or contact CorporateCompliance@informatica.com
- Phone numbers for reporting ethics and compliance issues from outside the U.S. can be found here:
 - <https://secure.ethicspoint.com/domain/media/en/gui/24244/phone.html>
- The Informatica legal and compliance teams are available to help you navigate through these issues.