



ABA Professional Development

How to Address the New Anti-Corruption Environment

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FCPA Enforcement Actions





Recent FCPA Enforcement Actions

- Johnson & Johnson - \$70 million
- JGC Corporation - \$218.8 million
- Alcatel-Lucent - \$137 million
- BAE - \$400 million
- Snamprogetti Netherlands B.V./ENI S.p.A. - \$365 million
- Technip S.A. - \$338 million
- Daimler AG - \$185 million



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Managing the FCPA and the UK Anti-Bribery Act





What we need to protect against!

- An offer, promise, payment, authorization, or giving of . . .
- anything of value . . .
- directly or indirectly . . .
- to a government official . . .
- for the corrupt purpose of influencing the official or to gain any improper advantage or . . .
- to obtain or retain business



Corruption Risks

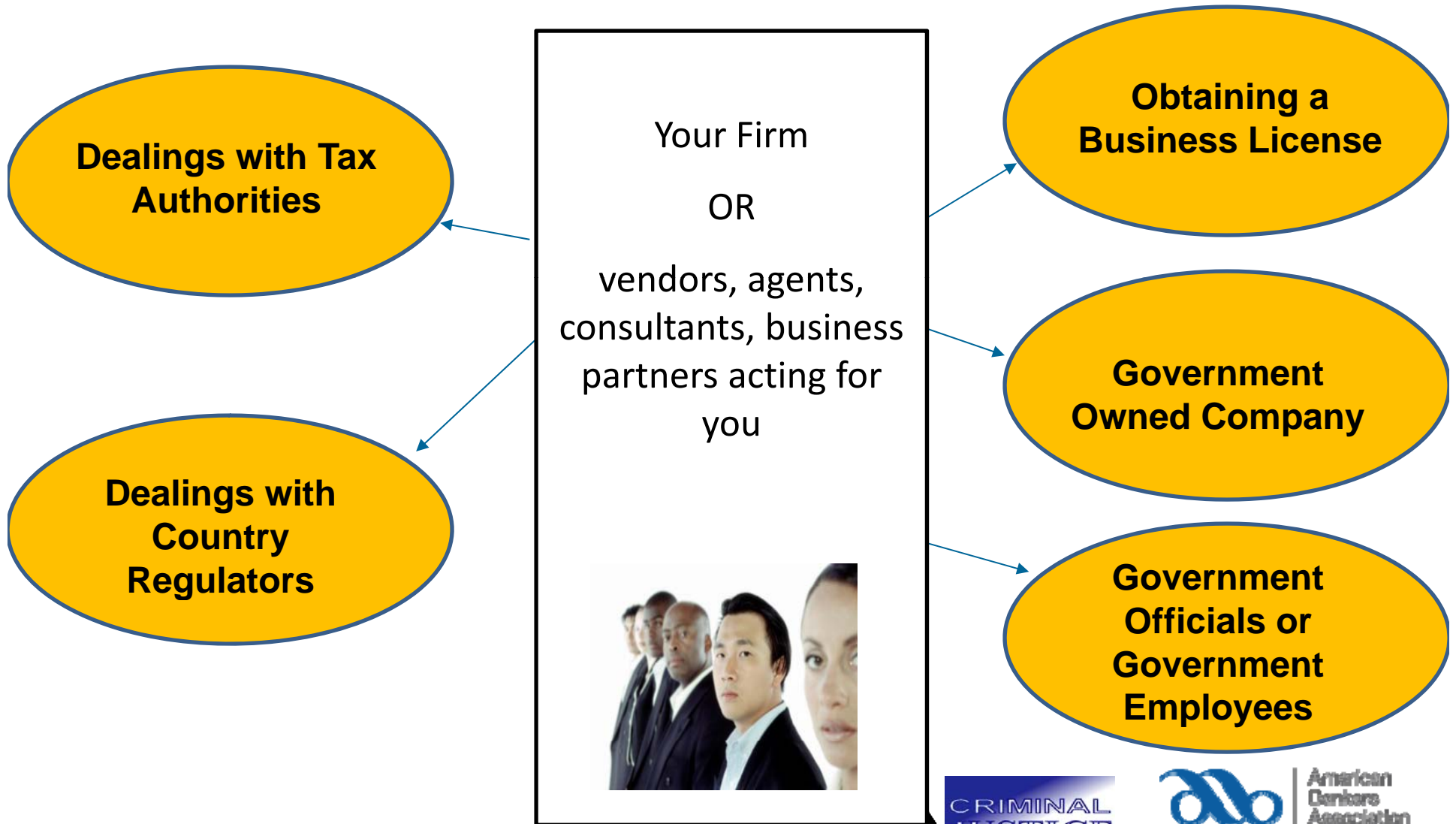
- Corruption and bribery risk exists wherever there are contacts with government officials or their agents
- Contact with government officials can be directly or indirectly through agents, intermediaries, sales representatives and consultants
- Can also be liable for violations through 3rd parties, such as business partners or joint ventures which may have low anti-corruption standards or unacceptable business practices



Increasing FCPA Risks

- A presence in multiple foreign jurisdictions, some of which historically have a high degree of corruption by public officials
- Frequent dealings with foreign public officials and entities owned or controlled by foreign governments, such as banks, airlines, oil/gas refiners
- Dependency on third parties that conduct business for you and may interact with government officials/companies

Anti-Corruption Touchpoints



Defending Liberty
Pursuing Justice

CRIMINAL
JUSTICE

 American
Bar Association
ABA Professional Development



Where Firms Usually Fail

Anti-Bribery Provisions

Firms usually fail to have in place:

1. Policies, Procedures
2. Anti-corruption Training
3. Adequate Monitoring & Controls

Firms do not have adequate program that would make it less likely that individuals or 3rd parties would violate FCPA

Books/Records/Internal Controls Provisions

- Firms will not disclose in books/records the true nature of the payment
- Actual cost incurred is for payments of bribes
- Fail to comply with the books and records provisions of FCPA



Key Terms to Remember

- ! Offer, Promise, Pay, Authorize, or Give Anything of Value
- ! Government Official
- ! Influence the Official
- ! Obtain or Retain Business



General Rules for Analysis

- In most cases, you can analyze whether there is an FCPA issue by asking yourself the following questions:
 - Are you dealing with a government official?
 - Would you be providing him/her something of value?
 - Could it appear that there is an improper intent to influence the official?



Scenario One

- You decide to arrange a business dinner with a foreign regulator at an upscale restaurant
- You call him to organize the dinner and ask about his availability
- Not getting your point, he is effusive with thanks and says that he and his wife love the caviar and fine wine at the restaurant, and they both certainly will attend



Scenario One - Continued

- Now what do you do?
- Can you just not claim reimbursement for the wife's attendance from the Company and pay her expenses on your own?



Scenario Two

- You have a meeting with regulators regarding a proposed new law favorable to foreign banks doing business in the local market
- During the small talk after the meeting, a senior official casually mentions that he has a grandson who is in the United States and who would like to find an internship with ABC Financial
- He asks if you can help
- What do you do?



Scenario Three

- You have applied for renewal of a business license, but the clerk indicates that it will be quite a while before he can get to your application and that it may not move very far without some additional incentive
- Can you provide this “incentive?”
- What if the individual was an agent of a regulatory authority conducting an audit, and he indicated that a good faith “gesture” of cooperation might allow him to terminate the audit early
- Would the result be the same?



Scenario Four

- ABC Financial is seeking agents to explore opportunities in an up and coming Asian economy
- An official of the country that you met at an embassy reception highly recommends a particular person, noting that he is very effective in getting business
- You look into the person's background and find that a few years ago he was the subject of several allegations of fraud, but that there was no legal action taken against him and that he asserts that he committed no wrongdoing
- Do you retain him?





What We Can Do

- No intent to influence for improper advantage
- No appearance of impropriety
- Address risks in arrangements with third parties such as agents and distributors
- Only token gifts
- Reasonable travel, lodging, and entertainment
- Expenditures recorded accurately and in reasonable detail



Due Diligence for Vendors / Intermediaries

Level of DD

- Basic
- Standard
- Enhanced

Vendor category

- Low risk vendors
- Medium risk vendors
- High risk vendors/Intermediaries

Frequency of DD

- Every 5 years
- Every 3 years
- Annually

Minimal risk vendors are classified as “Out of Scope” and upon screening no further DD is required.

Factors to consider in assessing vendor risk:

- Ties to government
- Public v. private company
- Country of operation
- Type of commodity/service being provided
- Capability to provide services contemplated
- Reputation
- Method of payment requested
- Other questionable circumstances