Compliance Clinic

The Travel Act & Anti-Graft Compliance

The Foreign Corrupt Practices Act is one of the most effective anti-corruption weapons in the arsenal of the **U.S. Department of Justice**. But for all its power, the FCPA has a blind spot: while the Act prohibits payments to foreign public officials, it does not have any restrictions on private commercial bribery overseas. The recently-enacted U.K. Bribery Act was labeled in the popular press as the "FCPA on steroids" in part because it included such a restriction. However, the DoJ has increasingly turned to a little-known tactic to close this loophole and target foreign commercial bribery by prosecuting individuals and companies under a lesser-known, but potentially very powerful, statute known as the Travel Act.

Given the significant penalties that can result from such a charge, it is important for companies to understand this statute and develop internal policies and procedures to ensure compliance.

The Travel Act

Congress passed the Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises Act—more commonly known as the Travel Act—in 1961 to help local law enforcement officials prosecute organized crime. For companies attempting to ensure compliance with commercial anti-bribery laws, the elements of the Travel Act are straightforward. It prohibits "travel[ing] in interstate or foreign commerce"—in other words, travel between states or abroad—or using "the mail or any facility of foreign commerce"—for example, an overseas wire transfer, email or telephone call—with the intent to "facilitate the promotion, management, establishment or carrying on of any unlawful activity." The Act defines "unlawful activity" as, among other things, "bribery...in violation of the laws of the state in which committed or of the [U.S.]."

TRAVEL ACT: KEY POINTS

- Prohibits traveling or using the mail or any "facility" of interstate or foreign commerce, such as email or wire transfer, for the purpose of carrying on bribery in violation of state or federal law
- Use of the Travel Act thereby allows the DoJ to extend its prosecutorial reach to private commercial bribery overseas that would not be implicated by the FCPA.
- Each violation of the Travel Act carries a penalty of up to $250,000 and five years in jail.

The statute, therefore, allows the prosecution of foreign bribery not involving a government official if such activity is prohibited under the law of any state implicated by the action: for example, the state in which the improper foreign bribe was arranged by phone or the state where a company employee traveled to or from in order to pay a bribe to a foreign private employee. Each violation of the Travel Act carries a potential penalty of up to $250,000 and five years in jail.

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Recommendations

While it is too early to determine the full extent of the DoJ's Travel Act prosecution strategy, the Department's own guidance on the FCPA emphasizes that "other statutes such as... the Travel Act...may also apply to [company] conduct." The recent increase in Travel Act-related prosecutions serves as additional evidence that the statute represents a significant anti-corruption concern and companies should therefore adapt their compliance policies accordingly (see box). For example, in the last two years the DoJ has brought cases against a range of executives for allegedly having bribed foreign private individuals via overseas wire transfers sent from the U.S. Those payments ran afoul of laws in California and Pennsylvania even though they did not involve government officials.

As an initial matter, firms should review and analyze the commercial bribery law of all states in which they operate. Many states have such statutes and several—such as New York and Texas—prohibit the conferring of any improper benefit, regardless of amount. After examining state commercial bribery laws, companies should then review and, if necessary, revise their compliance policies and procedures to account for these state law requirements. Even companies that have recently adopted strong compliance programs in response to increased FCPA scrutiny should pay careful attention to the concerns raised by Travel Act prosecutions. This might include retraining executives and employees to make clear that foreign commercial bribery is also prohibited.

COMPLIANCE CHECKLIST

- Review commercial bribery statutes of all states where the company operates.
- Review and revise compliance policies and procedures to account for these state bribery restrictions. Note that several states, including New York, Texas, Connecticut, Pennsylvania, Massachusetts, New Jersey, and Florida, have commercial bribery statutes that prohibit the conferring of any improper benefit, regardless of amount
- Retrain company executives and employees to emphasize that overseas bribery restrictions extend beyond government officials

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