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US FCPA AND UK BRIBERY ACT



LEGALIGENCE STRATEGIC CONSULTING LLP™

THE IMPORTANCE OF AML TRAINING AND DUE DILIGENCE FOR US FCPA AND UK BRIBERY ACT

In 2018, the United Nations estimated that the global cost of corruption and bribery amounts to an alarming \$3.6 trillion. Bribery involves the offering and provision of money or items of value in return for favourable treatment or influence. In some cases, receiving a bribe, is also treated as a crime.



❖ US FCPA

The FCPA requires companies whose securities are listed in the U.S. to meet its accounting provisions, including maintaining books and records to accurately represent the company transactions and creating and maintaining an adequate system of internal accounting controls.

The FCPA's anti-bribery provisions are not only applicable to U.S. citizens conducting business abroad. Now foreign companies and non-U.S. citizens who conduct business the U.S. and foreign-owned companies conducting business in the U.S. also need to adhere to specified accounting and record-keeping provisions.

The penalties for FCPA violations are severe and they are as follows:

1. Criminal Penalties

For anti-bribery violation, corporations are subjected to a fine of up to \$2 million while individuals are subject to a fine of up to \$250,000 as well as imprisonment for up to five years.

For accounting and record-keeping violation, business entities can face fines capped at \$25 million. Individuals are subject to a fine of up to \$5 million and imprisonment of up to 20 years per violation.

2. Civil Penalties

For each anti-bribery violation, both corporations and individuals face a civil penalty of up to \$16,000.

For accounting and record-keeping violation, the penalties can be between \$75,000 to \$725,000 and \$7,500 to \$150,000, respectively. If penalty is based on the "gross amount of the pecuniary gain", then it is limitless.

Under FCPA, a corporation had to pay close to a billion-dollar penalty, the officers of a U.S. company were fined for permitting the payment of bribes in a non-US country and a company official had to pay fine of \$20,000 for evading his company's internal accounting controls.



❖ UK BRIBERY ACT 2010

This Act criminalized bribery, the bribing of foreign government representatives and the failure by private companies to prevent corruption. It also made it an offense to be bribed. The act applies to UK citizens, residents and companies and companies that are incorporated in the UK, or that conduct business in the UK.

The penalties for UK Bribery Act violations are severe and they are as follows:

- For individuals - up to 10 years in prison and unlimited fines based on the severity of the bribery offense.
- For companies - unlimited fines, a formal mandate to implement an anti-bribery program, forfeiture of financial gains received as a result of the bribe and dismissal of responsible directors and subsequent 15-year ban of holding a director position.

In one of the cases, violation has resulted in prison for some participants and the confiscation of more than 1 million £. In other cases, offenders, in addition to paying millions in confiscation orders, have paid tens of thousands in legal costs, and had to compensate their companies to the tune of hundreds of thousands of £.