



Resolving Risks of Corruption in China

Presented by

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Robert Oberlies

- Robert Oberlies is an officer with the law firm of Fredrikson & Byron and was based in China for more than 10 years, counseling predominately U.S. companies on all aspects of their business in Asia, including mergers and acquisitions, foreign direct investment, joint ventures, technology licensing, anti-trust, customs disputes, labor and employment issues and trading.
- He has extensive experience advising companies on anti-corruption and related compliance issues, conducting internal investigations and helping to design and implement effective compliance programs. He has experience in a broad range of industry sectors, including medical devices, bio-tech, energy, agribusiness, logistics and automotive.
- Robert received his J.D. from Northwestern and is currently based in Fredrikson's Minneapolis office.

Agenda

- I. Bribery and the Global Response
- II. Noteworthy Cases
- III. Takeaways and Best Practices

I. Bribery and the Global Response



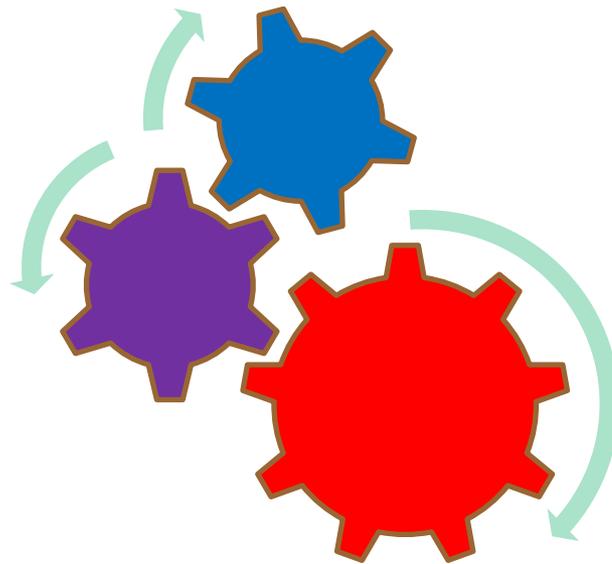
Global Response to Bribery

- Widespread recognition and condemnation by international community:
 - United Nations Convention Against Corruption
 - Council of Europe: Criminal Law Convention on Corruption, Civil Law Convention on Corruption, Code of Conduct for Public Officials
 - EU: EU Act Against Corruption
 - Organization of American States: Inter-American Convention Against Corruption
 - OECD Working Group on Bribery: Anti-bribery Convention

The Global Response to Bribery

- Many countries have enacted laws to combat bribery and corruption:
 - US: FCPA in 1977
 - UK: The Bribery Act, enacted in 2010
 - Germany: Anti-Unfair Competition Law, German Criminal Code, German Anti-Bribery and Anti-Corruption Law
 - Hong Kong: Prevention of Bribery Ordinance, Independent Commission Against Corruption Ordinance, Corrupt And Illegal Practices Ordinance
 - China: Criminal Law, Civil Servant Law

II. Noteworthy Cases



Glaxo Prosecution in China

- A Chinese court in Sept 2014 imposed a fine of nearly \$500 million against GlaxoSmithKline for allegedly bribing hospitals and doctors, channeling illicit kickbacks through travel agencies and pharmaceutical industry associations.
- The court sentenced GSK's former country manager and four other company managers to potential prison terms of up to four years and then suspended the sentences, allowing the defendants to avoid incarceration.
- Earlier in August, principals in the investigative firm ChinaWhys were sentenced by a Chinese court to a year in prison after they were hired by GSK to look into whether a former employee was passing information about suspicions of fraud at the company to Chinese authorities.
- Authorities determined that the ChinaWhys principals illegally obtained private information for GSK.

Recent FCPA Sanctions Violations in China

- **Diebold:** Furnished international leisure trips totaling \$1.6 million to Chinese employees of government-owned banks in return for \$265 million in sales contracts. On Oct 23, 2013, Diebold agreed to a 3-year deferred prosecution agreement with the DOJ with \$25.2 million in criminal penalties, retention of a compliance monitor for 18 months, and implementation of rigorous internal controls. Disgorgement of \$22.9 million in profits and prejudgment interest.
- **IBM:** Mis-recorded cash payments, gifts, travel, and entertainment totaling \$207,000 to government officials in South Korea and China, in return for \$54 million in sales. On July 24, 2013, IBM settled with the SEC agreeing to pay a \$2 million civil penalty, \$5.3 million in disgorgement of profits, and \$2.7 million in prejudgment interest, and rigorous implementation of anti-bribery compliance program. IBM also in the middle of a DOJ investigation for FCPA violations in Poland, Argentina, Bangladesh and the Ukraine.

FCPA Sanctions for Violations Involving China in 2013

- **Keyuan Petrochemicals**: maintained a \$1 million off-books account funded through the sale of promissory notes, scrap metal and construction materials as well as fictitious employee reimbursement claims, and used, in part to fund gifts and red envelopes to Chinese government officials from environmental, port, police and fire departments, typically around the Chinese New Year. On Feb 23, 2013, Keyuan settled with SEC by paying \$1 million. The CFO settled by paying \$25, 000 and was suspended for two years.
- **Maxwell Technologies Executive**: Settled with an \$8 million criminal penalty, a \$5.654 million civil penalty, and \$700,000 in prejudgment interest. Violations include “extra amounts” added to invoices as commissions which were kicked back to Chinese employees.

Recent FCPA Prosecutions Involving China

Siemens Global Bribery Scandal

- An estimated amount of more than 1 billion Euros was involved in cross border bribes.
- The employees in Siemens engaged in bribery transactions to procure orders by signing fictitious “consultant agreements” and depositing the “consulting service fees” into secret overseas accounts, opened by Siemens’ globally located shell companies.
- Lots of projects were involved.
- Many Siemens China businesses were involved in this scandal including its Transportation Systems China, Power Transmission and Distribution China and Healthcare Group China. More than 20 of its China employees involved were fired as a result.

Recent FCPA Prosecutions Involving China

Company	Violation of Law	Fine
UT Starcom Inc	Bribery	US\$3,000,000
BAE Systems, PLC	Bribery and conspiracy of false statement	US\$400,000,000 One of largest ever in FCPA prosecution
Innospec, Inc	Bribery and kickbacks	US\$40,200,000 world-wide settlement
Daimler AG	Bribery	US\$180,000,000 Criminal/civil fines, penalties and disgorgement
Lucent Technologies	Books and Records	US\$2,500,000
York International Corporation	Bribery; Books and Records	US\$22,032,880 fines US\$8,949,132 disgorgement of profits US\$1,083,748 interest
Paradigm BV	Bribery	US\$1,000,000

Recent FCPA Prosecutions Involving China

Company	Violation of Law	Fine
Schnitzer Steel	Bribery; Books and Records	US\$15,200,000
Diagnostic Products	Bribery; Books and Records	US\$4,800,000
InVision Technologies	Internal Controls	US\$1,889,000
Merck KGaA	Bribery; Books and Records	Under investigation
Ally Deinson	Bribery	US\$200,000
CCI	Bribery	US\$18,200,000
Watts	Books and Records; Internal Controls	US\$3,500,000 and individual penalty US\$25,000

III. Takeaways and Best Practices



Takeaways

- Life sciences are especially prone to bribery prosecutions.
- Exposure to both public and private sector bribery (under Chinese anti-bribery laws)
- Exposure of individuals, including officers and directors
- Increased reliance on whistleblowing

Takeaways

- Increased awareness of high risk areas:
 - Use of consulting fees
 - Sales commissions
 - Lavish travel expenses
 - Payments through agents (third-party service providers)
 - Subcontract fees or installment payments

Takeaways

- Increased awareness of high risk areas:
 - Entertainment costs
 - Reimbursements to customers
 - Training and inspection trips
 - False invoices
 - Slush funds

Best Practices

- Defense of “adequate procedures”
 - If a commercial organization can show that “adequate procedures” have been put in place to prevent bribery by those associated with the organization.
 - No official guidance on “adequate procedures”

Best Practices

- Defense of “adequate procedures”
 - Possible procedures:
 - Board commitment for anti-corruption program and a clearly articulated policy against corruption
 - Code of conduct and compliance procedures
 - Risk assessment
 - Training and continuing advice
 - Financial controls
 - Third-party due diligence and payments
 - Reporting and investigation procedures

Best Practices

- Localize policies and procedures
 - Select compliance team members experienced in international and Chinese anti-bribery legal requirements
 - Revise compliance procedures based on actual compliance needs, employee feedback

Best Practices

- Concentrate on high risk due diligence:
 - Third parties involved in obtaining government licenses or approvals
 - Third parties involved in securing business from government customers
 - Pre-acquisition due diligence and post-acquisition integration

Best Practices

- Concentrate on high risk due diligence:
 - Compliance officer in charge of final review of due diligence procedures, based on total circumstances surrounding the transaction (type of services, value of contract, industry, etc.)

Best Practices

- Contractual provisions:
 - Identify relevant corporate agreements to ensure representations, warranties, covenants and indemnification are helping to drive compliance with US and foreign laws throughout the company's supply chain

Best Practices

- Tailored Trainings:
 - Conducted in both English and local language
 - Trailered to audience
 - Based on real-business scenarios
 - Findings from internal audits and investigations
 - Interactive



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