

Foreign Corrupt Practices Act: Bribery in the Cultural Context.

Abstract

From as early as 1977 we have witnessed the progression of corruption within corporations and even more significant progress in the combat against corruption with the enactment of multiple legislations such as the Sarbanes-Oxley Act of 2002 and more relative to this study, The Foreign Corrupt Practices Act of 1977. FCPA compliance has several issues within multi-national corporations ranging from import and export issues, lack of transparency in international trade laws and bribery with improper payments to government officials, employees, and third-party professionals. Beginning with summarizing the literature about the concept of bribery, the scope, and factors of the Foreign Corrupt Practices Act of 1977, there is focus on the current compliance enforcement metrics from the start of enactment to the present day. In the next section, the theoretical framework outlines moral relativism and how it is more definitive of describing corruption. This paper includes a summary of trends in FCPA violations as reported by the Securities Exchange Commission and the United States Department of Justice over the last five years since the Bribe payers index in 2011. The countries that are included in the index and match the Corruption and Bribe Payers Index and how the enforcement should exist in the future are assessed. The purpose of this paper is to define bribery and connect cultural context to the FCPA cases in violation from 2014 to 2018.

Keywords: Foreign Corrupt Practices Act, Bribery, Corruption, FCPA compliance, Anti-bribery, FCPA

Foreign Corrupt Practices Act: Bribery in the Cultural Context

Introduction

While doing business in the United States, the culture for American management is to follow the legislation and regulation that has been set to uphold corporate governance and a code of ethics within an enterprise. Regulatory bodies such as the Securities Exchange Commission, Internal Revenue Service, Financial Accounting Standards Board and many others oversee financial reporting within corporations establishing rules and regulations that govern the way that corporations are governed to make it equal and fair for all invested.

These regulating bodies establish rules that govern against corruption and fraudulent activity to prevent it from occurring in the US. Yes, the reality is that fraud and other corrupt activities take precedent in the US, but there are various counsels, and bodies in place such as the Department of Justice, and SEC to discover the fraud and bring that criminal activity to justice. For foreign counterparts there are legislations put in place such as the Foreign Corrupt Practices Act of 1977, to govern and defend against violations of improper payments better known as “bribes” to foreign government officials to retain any business. Anti-bribery provisions have been set by the FCPA that go against any instrumentality and act of bribery by individuals who make questionable illegal payments.

US corporations tend to culminate when it comes to international expansion. Their global operations take on new leadership, new presence, and an increasing amount of interest in areas of the world where new business is not as easy to obtain. "Everyone knows you cannot do business in (Mexico, China, India, Russia - pick a country) without paying bribes. It is part of their culture. It is crazy to have a US law that makes

paying bribes in foreign countries illegal in the USA” (Clayton, 2011, p. 1). The role culture plays in corruption can be based on emerging economies in developing countries where the goal is to drive business, not deter investment. “It is bad for the people who suffer under corrupt governments, it is bad for business, and it is bad for the development of the rule of law in these countries, which is an integral part of attracting foreign investment.” (Reinsch, 2008). This statement is especially true when trading and doing business in a country where bribery is endemic in that area and contributes to the country’s infrastructure.

The focus of this paper is on the cultural dimension of bribery within multinational corporations. This research observes the constructs of the Foreign Corrupt Practices Act of 1977. This paper will explain how moral relativism and instrumentality has shaped bribery that takes place within corporations, as well as how this constitutes a lack of comprehension when it involves code of ethics and US laws against corrupt acts more specifically bribery acts.

Literature Review

Moral Relativism & Culture

Behavioral patterns and how individuals use their judgment may differ according to the moral values they possess. Moral relativism is a viewpoint that moral judgments are not absolute or universal but can be related to a specific standpoint such as research, literature, or a historical period. “Moral relativism of cultural, as opposed to individual or personal, is commonly understood as the view that the truth or justification of moral claims and values become dependent on the moral code of the culture in which they occur.” (Sikka, 2012, pg. 50) Moral Relativism distinguishes according to the culture, individuals, and societal belief. The aspect of moral relativism

is less considerable when individuals apply any moral philosophy as a universal rule or stipulation.

It can be clear that an individual's emphasis on moral rules and principles when making decisions about right and wrong shape relativism (Forsyth, 1980). Those who believe that their actions should not be categorized or deemed right or wrong or ethical versus unethical are practicing the philosophy of moral relativism. This thought can be closely related to the perception of corrupt activity and behavior. According to Sulsky, Marcus and MacDonald (2016) "if a theft act occurs, the highly relativistic individual may be particularly sensitive to situational factors that may be taken into account when judging the extent to which the theft act represents unethical conduct." (pg. 386)

There is an innate relationship between culture and judgment and especially who is in place to express moral judgment in cases of fraud. Control or power explains misperceptions other cultures have in bribery acts regardless of the universal standards such as the FCPA act. "Highly relativistic people tend to configure their moral judgments based on the context of the particular situation and action they are evaluating. These individuals are likely to remain pragmatically open to exceptions to these rules. On the other hand, people who are less relativistic have more faith in moral principles, norms, or laws." (Wang and Calvano, 2015, pg. 594). Ideologies of culture are often unification, dominant agents, bias, moral judgment, and different moral justifications in business.

Ethical Culture

Fraud and corruption are a direct violation of trust and relates to Cressey's thoughts in previous literature that state that crime is influential and not understood but perceived justifiable. Ethics can be enhanced or derailed by certain conditions within a

corporation. The strength of the core values of the business demonstrated ethical culture. Stein (2008) stated that to build the foundation of value within an organization, employees should adopt a general idea of the way the firm operates, physically and culturally.

As it is essential to build value, there is an assumption that not all businesses will possess respected values and standards. According to Jongen, Verschoor, and Wolff (2007), observing the theory of ethical relativism, companies will have different moral ideals. The determinant of morality that serves as the standard of moral relativism is complex and undeterminable; therefore, should not be adopted by all corporations. As it relates to moral culture, there should be standards established as well as a frequent examination of the values linked to the goals of the firm. Velasquez speaks of relativism, emphasizing that it may not be morally acceptable in other enterprises, but that does not mean those standards cannot be encouraged. Jongen, Verschoor, and Wolff (2007) stated that companies should possess an ethical culture and take some compliance initiatives as conduct will coincide with the core values to build a stronger enterprise. Taking compliance initiatives would include tracking performance and enhancing quality assurance. Jongen, Verschoor, and Wolff indicated that a corporation must establish a level of trust, accept responsibility in all circumstances, and reward performance.

The relationships and values that are present within a company create an ethical culture. Employees that have values that are like the organization will possess the moral culture that is about the responsibility within the organization. Likewise, if the employee's values are different from the company's, moral culture, there will be less responsibility taken to meet the company's goals. According to Bannon, Ford, and Meltzer (2010), if enterprises focus on ethical culture, strong values can assist in

formulating compliance initiative development. Establishing ethical culture is a matter of enterprises focusing on like values of its employees while maintaining social responsibility by having compliance initiatives in place.

Social Responsibility

Social Responsibility should include social involvement with the community as an overall contribution. McWilliams and Siegel (2001) stated that the stakeholder pressure placed on the corporation could cause conflict with trying to meet corporate objectives and the responsibility to meet the community's interest. One contrast between social responsibility and ethics is that responsibility is taken based on the ethical decision. An organization acts ethically by being socially responsible. For an organization to act responsibly, circumstances within the environment should be active and of sound judgment.

According to Chih, Chih, and Chen (2010), an organization will not function socially in an environment that is unhealthy and does not contribute to positive improvements. If an organization does not operate responsibly, decisions within the organization that directly affect society will lack depth. Social responsibility and governance correlate because to make crucial decisions; the organization must have active leadership systems in place. Chih, Chih, and Chen (2010) stated that leadership systems are what builds governing skills. Social responsibility descends from having a moral character. Argandoña and Hoivik (2009) suggest that it is better to evaluate individuals of perceived moral character as if they possess social responsibility qualities.

Companies, even though composed of members, are not able to use nature as a basis for morality or ethics. According to Maiti (2009), choices are inspired by values that are

contingent on standards or social interactions. Positive values within an organization can produce active processes and systems that allow creativity within the leadership. Maiti (2009) stated that trust and cooperation within the organization is a behavioral approach to dynamic business ethic development. Since behavior patterns display moral character, the values of individuals will bring positivity to the corporation as long as that person displays ethical character.

Theoretical Framework

Agency

Adolf Berle and Gardiner Means in 1932 developed the agency concept. Berle and Gardiner made it clear that there has to be a distinct difference in ownership and control in US corporations to dismiss dominance and excessive control. (Cheffins & Bank, 2009) Berle and Gardiner's concept means that there should not be dominant members in a corporate board who wish to have complete control of corporate affairs and overall returns. Independent board members who have an urgent desire to make decisions for the organization based on personal interest versus the best interest for the company describes Agency. Leland (1998) stated that agency theory shows that corporations with structure should embrace agents that are keen on following and protecting the interests of the principles.

Instrumentality and Control

Instrumentality in hindsight is an extension of agency within an organization. Instrumentality relates to organizations who act through individuals who serve as an instrument to carry out specific tasks. According to the Harvard Law Review (2015), the Eleventh Court Circuit defined instrumentality under the Foreign Corrupt Practices Act as "an entity controlled by the government of a foreign country that performs a

function the controlling government treats as its own.” This more advanced definition focuses specifically on the acts of a foreign government and the circumstances that create such a dominant influence. Is “instrumentality” about control by the corporation or by the government?

Instrumentality, as it relates to US federal securities laws, is the actual act of offering the bribe not the knowledge of the bribe. “The statute makes it unlawful to make payments or gifts directly to foreign government officials or indirectly to such persons through an intermediary while "knowing" the payment or gift will be passed on.” (Berger, Sheehy, Davis, and Kenya, pg. 77, 2007) Conversely, Huskins (2014) states that the government oversees and influences functions to practice instrumentality in foreign operations and display monopolistic behavior. While the definition of what “instrumentality” truly is and how it applies to the Foreign Corrupt Practices Act is still bleak but one factor that is concrete is that it is “illegal” for a corporation or individual of a corporation to offer anything of value to a government official in exchange for business, which considered a “bribe”.

Corruption Effects on Corporate Governance

According to Brickley and Zimmerman (2010), while not explicitly stated and defined by standard definitions, functions of board mechanisms control the focus on corporate governance. Bushman et al. (2004) stated that corporate governance is dependent on organizational culture, management, and leadership within a company. Fombrun (1983) defined corporate governance as an organization of structure as well as social protection to uphold the interests of shareholders. According to Stein (2008), corporate governance is the actions of managers and the obligation for fiduciary responsibilities. Fombrun (1983) believed that culture within an organization has long-term expectations of governance through corporate collaboration. Ostas (2007) believed

that corporate firms are more favorable when they provide guidance and signal monitoring of efficiency, which in turn decreases the likelihood of fraudulent acts. Reffett (2010) stated that experts should detect fraud risks during planning to meet expectations of standards. A primary concern in corporate governance is the enforcement of regulation and controlling when corruption is present.

Due to the backlash of previous accounting scandals such as Enron and Tyco, detection of the corrupt and fraudulent actions within corporations is supported by the various anti-corrupt and anti-fraud initiatives such as Sarbanes- Oxley and similar legislation like the Foreign Corrupt Practices Act should assist in this effort. According to Simon (2010) after performing a study focused on local London authorities, fraud issues were neglected and mismanaged. Local London authorities were ill-equipped for all areas of corrupt financial practices because they order the cases based on their typologies. The London local authorities, according to Simon experience fraud in abundance externally and consider the external zone more significant. The tactic of putting more attention on the external fraud more than internal, allows London Local authorities to defend the grants and government funds received to support law enforcement. (Simon, 2010)

Emmerson (2012) stated that a corporation's internal control measures are not always applied internationally, simply because of a lack of cultural knowledge. In efforts to avoid possible fraud occurrences, detecting corruption should be one of the most important goals of any corporation. Hemphill (2010) explains that due to global conflict, companies engage in addressing issues quickly to sustain the business's bottom line. Quick responses to corporate issues can contribute to the creation of more concrete and enhanced regulations in the future.

Discussion

Foreign Corrupt Practices Act of 1977

Due to over 300 US companies being investigated by the SEC in the 1970s for bribery payments to foreign government officials, Congress in 1977 enacted the Foreign Corrupt Practices Act in efforts to restore the confidence lost in US companies who engage in foreign business. The FCPA act encompasses two different areas of provisions that eliminate both corruptions with bribes to government officials and accuracy of the accounting and financial reporting for publicly traded companies as well as the effectiveness of their internal controls. The act of “bribery” includes any forms of payments that are offered, accepted or solicited to a government official in exchange for business and is not limited to gifts, cash, charitable donations, entertainment, speaking or consulting engagements and many other items that hold monetary value. The FCPA proscribes any behavior of bribery across the globe and covers publicly traded corporations and all related parties not limited to principals, agents, and all other stakeholders.

From the enactment date of the Foreign Corrupt Practices Act to present, out of the 512 enforcement actions brought by the SEC and the Department of Justice, there have been a total of \$10,368,342,104 in monetary sanctions imposed for FCPA related actions. According to Hoffman (2017), the Foreign Corrupt Practices Act is one of the most important factors for international business in terms of compliance and legal risks involved. The violations of the FCPA have significant sanctions as it is possible that with breach of the anti-bribery provisions, the SEC can impose civil proceedings against

corporations and their related parties. Typically, these violations can result in significant disgorgement fees, interest, and other civil consequences.

After the enactment of the Foreign Corrupt Practices Act, there was a great concern that since the United States was obliged to the FCPA laws that it would create a drawback considering that many foreign corporations who participated in bribery acts were also allowed in many countries to deduct those same bribes on their tax returns. Due to this circumstance, in 1998 Congress and the Organization of Economic Cooperation and Development (OECD) ratified the Anti-Bribery Convention to combat bribery in international business transactions which are said to be like the FCPA act.

Bribery

Best (2007) defines bribery as a challenging cost of conducting business that leads to corruption and effects shared responsibility. Shared responsibility is between those involved in bribes regardless of whether money is accepted or otherwise, the act alone causes motivation of criminality. Best (2007) found that social discontent is a common factor in corruption and bribery. Social discontent can lead an organization in the wrong direction and cause a lack of corporate responsibility.

Bribery can relate to leadership style, and quality as the act of bribery is prevalent in getting ahead and keeping monetary earning promises. According to Nesbit (1998), bribery can hurt a corporation and weaken the development of the economy. Bribery causes the trade business to dwindle in areas that it never had the opportunity to prosper. The likelihood of international and local trade enhancing the economy, the inability to maintain control over pricing and other monetary factors are signs of potential corruption.

Considering potential mitigating risks such as bribery within a corporation is essential to regulation. According to Blum and Cohen (2013), bribery makes

corporations susceptible to competitive disadvantage as some compliance rules have loopholes and exceptions. When internal controls are stronger, and Sarbanes-Oxley implementation exists, anti-bribery compliance should also be present. Walton and Buck (2009) stated that bribery creates tough business decisions for those who do not partake in corrupt activities, especially if in countries that have that type of culture. “The legislation errors on the side of pragmatism and attempts to draw a line between large ‘brown paper bag’ bribes to corrupt government officials who accumulate enormous personal wealth while the vast majority of citizens live in poverty, and the small ‘grease payments’ that lift otherwise unsustainable public salaries” (Walton & Buck, p.408, 2009). The incentive is a direct driver in corruption, and many parties and third-party individuals have been beneficiaries of it.

Foreign Corrupt Practices Act – Compliance Enforcement

All criminal actions and execution against corrupt activity is the responsibility of the Department of Justice. The enforcement by the DOJ includes both criminal and civil matters of anti-bribery provision violations committed by foreign corporations. As it relates to issuers within a corporation, it is the SEC’s responsibility of civil enforcement for violation of anti-bribery provisions. The necessary provisions of the anti-bribery prohibition include who is covered by the provisions, what is actually covered as it relates to the “Business Purpose Test”, what is involved in corrupt intentions, how to define “foreign official”, the treatment of payments to third parties and many other provisions related to defense of the law, and payment facilitation.

Companies whose securities are publicly listed must meet the accounting provisions established as a part of the FCPA as well as anti-bribery provisions. As a complement to the antibribery provisions established, the accounting provisions’ purpose is to ensure that companies are to maintain their records to reflect accurate and

reliable information for financial transactions as well as maintain an effective system of internal controls.

United States Corruption Trends

The Association of Certified Fraud Examiner's is an anti-fraud organization dedicated to reducing occupational fraud worldwide by restoring public confidence, upholding integrity, and objectivity within the accounting and fraud profession. The ACFE publishes the "Report to the Nations" which is a comprehensive study that reports statistics on cases of occupational fraud across all geographic regions. There were 2,690 total cases studied, which includes 125 countries in 23 various industries.

The Association of Certified Fraud Examiners' 2018 Report to the Nations on Occupational Fraud and Abuse, reported fraud cases globally beyond the United States. As reported, occupational fraud and abuse caused 5 percent of business revenue losses for the year. The total losses from 2690 cases in the study exceeded \$7.1 billion. Asset misappropriation proved to be the most common type of fraud, occurring in 89 percent of all reported cases, but was the least costly, at a median loss of \$114,000. The industries most often experiencing fraud were the banking and financial services, manufacturing, and government and public administration sectors. Fraudulent financial statements represented only 10 percent of fraud cases studied but were the costliest form of fraud at a median loss of \$800,000.

In this study, 55 percent of the cases causing losses were less than \$200,000, and 22 percent of the cases resulted in losses of at least \$1 million. Tips are reported to be the most effective method for detecting fraud. By living beyond their means, which accounted for 41 percent of cases and experiencing financial difficulties which represent 29 percent of cases, fraudsters often signal their illicit activity. Small businesses, those

with less than 100 employees, are most likely targets for fraud as the smaller organizations lack the proper internal controls due to cost factors.

The ACFE reports that fraud perpetrators were most often first-time offenders. At least 90 percent of those identified as the perpetrators of fraud have never been charged or convicted of fraud. This percentage also indicates that criminal background checks may have a limited effect on preventing fraud. The accounting department and operations staff tied at 14 percent as the most likely perpetrators, the sales personnel at 12 percent, executives or upper management at 11 percent, customer service at 8 percent, purchasing personnel at 5 percent, finance at 6 percent and administrative support at 8 percent.

Fraud in the form of kickbacks and gifts or gratuities to employees of business or government cost employers more than \$20 billion per year. Recipients range from low-level clerks to the chief executive officer and elected officials. While the ACFE reports provide new clues to who is committing fraud in today's organizations, the report also depicts an alarming trend: increasingly, accountants, unfortunately, have been involved in many of these fraud schemes, and corruption is still known as the primary fraud scheme in every department, except for accounting.

Global Corruption Trends

Transparency International is a global organization founded in 1993 to combat foreign corruption and prevent corruption from arising. "We have fought to put in place binding global conventions against corruption. We have held governments and companies to account, exposing the corrupt and dodgy deals (saving more than US\$2 billion in the Czech Republic alone). We have helped hundreds of thousands of people to take a stand." (Transparency International, 2017). Amongst many index reports, the

organization publishes the Bribe Payers Index to rate countries using a corruption perceptions index or (CPI) rank based on several factors and a survey amongst business and industry sectors; the last report published is in 2011. The most recent Bribe

Foreign Corrupt Practices Act– Global Business

"Everyone knows you cannot do business in (Mexico, China, India, Russia - pick a country) without paying bribes. It is part of their culture. It is crazy to have a US law that makes paying bribes in foreign countries illegal in the USA" (Clayton, 2011, p. 1).

Mexico

There is a high rate of bribery in Mexico and an apparent misperception of corruption because of the complex regulatory environment, increased procurement and extortion risks that currently exist. Walmart is one of the most notable cases as being a major retailer. According to Edelson (2012), the damage of this ongoing case has given the retailer significant damage in public trust. "In 2005 and 2006, there was not a strong internal culture of compliance at Wal-Mart," said Matt Ellis, founder of Matteson Ellis Law. "Enforcement officials at the Department of Justice and the Securities and Exchange Commission are aware that programs have to be implemented to affect. No one was paying attention at Wal-Mart. Alternatively, when there was an inkling of wrongdoing, it was ignored and squashed. At that time, there was little or no internal ethics culture." (Edelson, 2012). Some of the most recent large-scale bribery cases in Mexico were as follows:

- BizJet paid 11.8 million in bribery payments to secure government contracts
- Wal-Mart has a current investigation going on potential bribery payments to government officials to secure building permits.
- Biomet paid 22.8 million in bribes to other healthcare professionals to retain Biomet products.
- Orthofix paid 7.7 million in bribes to doctors as a result of instrumentality to the government

- Tyson Foods made bribe payments to veterinarians for certification of products

China

Due to the significant growth of the economy over the last 30 years, China has become a significant piece of the corrupt circle. Growing economies allow the country to transition out of poverty quicker than expected. While corruption is discreet in China, it continues to grow economically and becomes more appealing to state and local government. According to Wedeman (2012), the surge in corruption stems from significant influence from officials of allocated valuable resources. These officials, while many of them were low ranking, they used manipulation to cash in on business by using means of cash, and other conventional mediums. "If China stands out, it is not because it is exceptionally corrupt, but rather because its growth rate has been exceptionally high." (Wedeman, 2012). In table 3A, detailed is a major count in bribery cases at 38 for the last five years. The Bribe payers index shows China at the bottom of the index in 2011 at a 6.5 score, which is lower than they have ever been in prior years.

India

India's economy has suffered much from the rising corruption over the last ten years. The corruption surge in India is due to the political system due to a lack of balancing power. After independence, the Indian government shows a lack of concern and the corruption increased as there are no separations of institutions, no accountability, and supremacy for Parliament. "Today, this system is severely and irreversibly out of balance. Powers in it are so extremely concentrated that governments have become unresponsive and corrupt." (Himachal, 2016). Some of the most recent large-scale bribery cases in India were as follows:

- Army Bribery, a bribe of 2.7 million offered by a lobbyist to purchase army trucks.

- Wikileaks, a bribe of cash for votes by a congress aid to an embassy official

Russia

Like China, Russia has an increasing, rapidly growing economy. “As the economy stagnates amid international sanctions and low oil prices, a high-profile bribery case has illustrated how the country’s most privileged players have taken to fighting over slices of a smaller economic pie, seeking an advantage over rivals through the courts and law enforcement officials who are widely seen as vulnerable to corruption.” (Kramer, 2017). Due to the increase in global presence, corruption grows due to the overflow of attractive investments. In table 3A, shows a major count in bribery cases at 20 for the last five years. The Bribe payers index shows Russia at the bottom of the index in 2011 at a 6.1 score, which is lower than they have ever been in prior years.

Conclusion

Organizations in the US that do business in foreign countries seem to have a deficiency in doing business when it comes to avoiding corrupt activity. The concern is the lack of knowledge that corrupt activities have taken place internationally when there are rules that should prevent such actions. Is this a lack of code of conduct elements or only a cultural misunderstanding? If it is said to be a cultural misunderstanding, on whom’s part should this be applied? Clayton (2011) stated, “Positive bias often blinds US businesses to the reality of international business, where bribes, kickbacks, and false or unrecorded transactions are common.

The corrupt activity also exists in the US, of course, but it is more difficult to understand what is going on in foreign countries when US managers have little or no language ability or cultural context.” (p. 1). In international business, corruption plays a

significant role considering the laws within many foreign countries lack ethical depth and are not as comprehensive as US laws. “Multinational companies need robust codes of conduct and top-level commitments to ethical behavior, period.” (Huskins, 2014)

References

- ACFE. (2018). "Report to the Nations: 2018 Global Study On Occupational Fraud and Abuse." Retrieved from <https://s3-us-west-2.amazonaws.com/acfepublic/2018-report-to-the-nations.pdf>.
- Argandoña, A., & Von Weltzien Hoivik, H. (2009). Corporate social responsibility: One size does not fit all. Collecting evidence from Europe. *Journal of Business Ethics*, 89, 221-234.
- Bannon, S., Ford, K., & Meltzer, L. (2010). How to instill a strong ethical culture. *CPA Journal*, 80(7), 56.
- Berger, P. R., Sheehy, E. W., Davis, K. K., & Yannett, B. E. (2007). Is that a bribe? *International Financial Law Review*, 26(4), 76-78.
- Best, B., (2007). Battling bribery, corruption abroad. *Canadian HR Reporter*, 20(7), 17-20.
- Blum, S., & Cohen, B. (2013). The cost of corruption. *Accounting Today*, 27(5), 18-23.
- Bribe Payers Index. (2011). Transparency International. Retrieved from https://www.transparency.org/whatwedo/publication/bpi_2011
- Brickley, J. A., & Zimmerman, J. L. (2010). Corporate governance myths: Comments on Armstrong, Guay, and Weber. *Journal of Accounting and Economics*, 50(2-3), 235-245.
- Cheffins, B., & Bank, S. (2009). Is Berle and Means really a myth? *Business History Review*, 83(3), 443-474.
- Chih, H., Chih, H., & Chen, T. (2010). On the determinants of corporate social responsibility: International evidence on the financial industry. *Journal of Business Ethics*, 93(1), 115-135.

- Clayton, S. (2011). Top ten basics of foreign corrupt practices act compliance for the small legal department. *Journal of the Association of Corporate Counsel*, 1(1), 1-6. Retrieved from <http://www.acc.com/legalresources/publications/topten/SLD-FCPA-Compliance.cfm?makepdf=1>
- Cressey, D. R., & Moore, C. A. (1983). Managerial values and corporate codes of ethics. *California Management Review*, 25(4), 53-77.
- Emmerson, R. (2012). Red flags to crime. *The Courier-Mail* (Australia), Retrieved from www.lexisnexis.com/hottopics/lnacademic
- Fombrun, C. J. (1983). Corporate culture, environment, and strategy. *Human Resource Management*, 22(1-2), 139-152.
- Foreign corrupt practices act -- "Foreign official" -- The eleventh circuit defines "government instrumentality" under the FCPA. (2015). *Harvard Law Review*, 128(5), 1500-1507.
- Forsyth, D. R. (1980). A taxonomy of ethical ideologies. *Journal of Personality and Social Psychology*, 39, 175-184.
- Hemphill, T. (2010). The "creative capitalism" corporate governance model. *International Journal of Law and Management*, 52(2), 110-123.
- Himachal, D. (2016). Why India needs the Presidential System. *Huffington Post*. Retrieved from http://www.huffingtonpost.in/bhanu-dhamija/there-is-reason-for-india_b_9853066.html
- Hoffman, B. (2017). The Global Reach of the U.S. Foreign Corrupt Practices Act. *Business Credit*, 119(8), 30-34.
- Huskins, P. C. (2014). Instrumentality and FCPA. *Inside counsel*, 25(274), 12.

- Jongen, R., Verschoor, W. F., & Wolff, C. C. (2007). Foreign exchange rate expectations: Survey and synthesis. *Journal of Economic Surveys*, 22(1), 140-165.
- Kramer, A. (2017). In Russia, a Bribery Case Lifts the Veil on Kremlin Intrigue. New York Times. Retrieved from <https://www.nytimes.com/2017/10/21/world/europe/russia-bribery-vladimirputin-igor-sechin.html>
- Leland, H. E. (1998). Agency costs, risk management, and capital structure. *Journal of Finance*, 53(4), 1213-1243.
- Maiti, P. (2009). From social capital to social profits: Discourses on corporate ethics, governance, choice, and values. *ASBM Journal of Management*, 2(2), 76-87.
- McWilliams, A. & Siegel, D. (2001). Corporate social responsibility: A theory of the firm perspective. *The Academy of Management Review*, 26(1), 117-127.
- Nesbit, J. B. (1998). Transnational bribery of foreign officials: A new threat to the future of democracy. *Vand. J. Transnat'l L.*, 31, 1273.
- Ostas, D. T. (2007). When fraud pays: Executive self-dealing and the failure of self-restraint. *American Business Law Journal*, 44(4), 571-601. Retrieved from <http://www.alsb.org>
- Reffett, A. B. (2010). Can identifying and investigating fraud risks increase auditors' liability? *Accounting Review*, 85(6), 2145-2167.
- Reinsch, W. (2008). The impact of corruption on global business. *National Foreign Trade Council*. Retrieved from <http://www.nftc.org/newsflash/newsflash.asp?Mode=View&articleid=1987&Category=All>

- Sikka, S. (2012). Moral Relativism and the Concept of Culture. *Theoria: A Journal of Social & Political Theory*, 59(133), 50-69.
- Simon, W. L. (2010). Fraud in London local authorities: A comparative appraisal. *Journal of Financial Crime*, 17(4), 387-403.
- Stein, M. J. (2008). Beyond the boardroom: Governmental perspectives on corporate governance. *Accounting, Auditing & Accountability Journal*, 21, 1001-1025.
- Sulsky, L. I., Marcus, J., & MacDonald, H. (2016). Examining Ethicality Judgements of Theft Behavior: The Role of Moral Relativism. *Journal of Business & Psychology*, 31(3), 383-398.
- Wal-Mart Bribery Issues in Mexico Intensify. (2012). *WWD: Women's Wear Daily*, 204(127), 2-1.
- Walton, J., & Buck, N. (2009). Bribery and corruption -- another elephant in the boardroom. *Keeping Good Companies*, 61(7), 408-411.
- Wang, L. C., & Calvano, L. I. (2015). Is Business Ethics Education Effective? An Analysis of Gender, Personal Ethical Perspectives, and Moral Judgment. *Journal of Business Ethics*. 126(4), 591-602.
- Wedeman, A. (2012). Growth and Corruption in China. *China Research Center*. 11(2).

Appendix A

Table A1

FCPA Bribery Enforcements

Description	2012	2013	2014	2015	2016
Total number of DOJ Enforcement Actions	17	19	15	15	26
Total number of SEC Enforcement Actions	12	9	8	11	29
Amount of Bribery Payments	\$ 202,567,626	\$ 258,292,821	\$ 349,910,122	\$ 22,588,977	\$ 1,649,732,327
Amount of Monetary Sanctions from DOJ	\$ 168,319,205	\$ 470,206,342	\$ 1,248,370,355	\$ 58,175,869	\$ 1,246,325,775
Amount of Monetary Sanctions from SEC	\$ 122,229,080	\$ 300,677,033	\$ 326,697,066	\$ 114,879,919	\$ 904,465,356

Table A2

FCPA Bribery Enforcement (Individual and Companies)

Description	2012	2013	2014	2015	2016
Individuals (SEC)Enforcements	3	1	1	2	14
Individuals (DOJ)Enforcements	6	10	3	14	9
Companies (SEC) Enforcements	14	8	9	9	25
Companies (DOJ) Enforcements	11	10	17	3	17

Table A3

FCPA Bribery Enforcements by Country (Matched with 2011 Bribery Index)

2012-2016	# of Cases	Amount of Bribes	Monetary Sanctions
Argentina	11	\$ 9,229,560	\$ 120,801,993
Brazil	9	\$ 325,000,000	\$ 189,292,935
China	38	\$ 101,138,045	\$ 593,693,626
India	9	\$ 22,434,431	\$ 25,108,491
Indonesia	15	\$ 650,626	\$ 100,430,223
Italy	1		
Mexico	19	\$ 16,537,000	\$ 582,611,964
Russia	20	\$ 20,096,708	\$ 116,531,422
Saudi Arabia	11		\$ 2,170,400
South Africa	1	\$ 6,027,170	\$ 19,000,000
Turkey	3		
United Arab Emirates	3		

Table A4

FCPA Bribery Enforcements by Geographic Region

2012-2016	# of Cases	Amount of Bribes	Monetary Sanctions
Africa	67	\$ 1,212,783,070	\$ 1,046,323,248
Asia	133	\$ 495,887,186	\$ 1,646,390,827
Caribbean	1		
Central America	10	\$ 75,435,000	\$ 776,272,591
Europe	43	\$ 94,870,307	\$ 212,203,885
Middle East	2	\$ 221,200,000	\$ 384,000,400
North America	26	\$ 28,477,000	\$ 768,157,945
South America	43	\$ 350,939,310	\$ 392,113,703
South Caucasus	1		
Other	6	\$ 3,500,000	\$ 18,060,749

Appendix B

FCPA Enforcement Cases Summary

Figure 1B

FCPA Enforcement Cases by Country

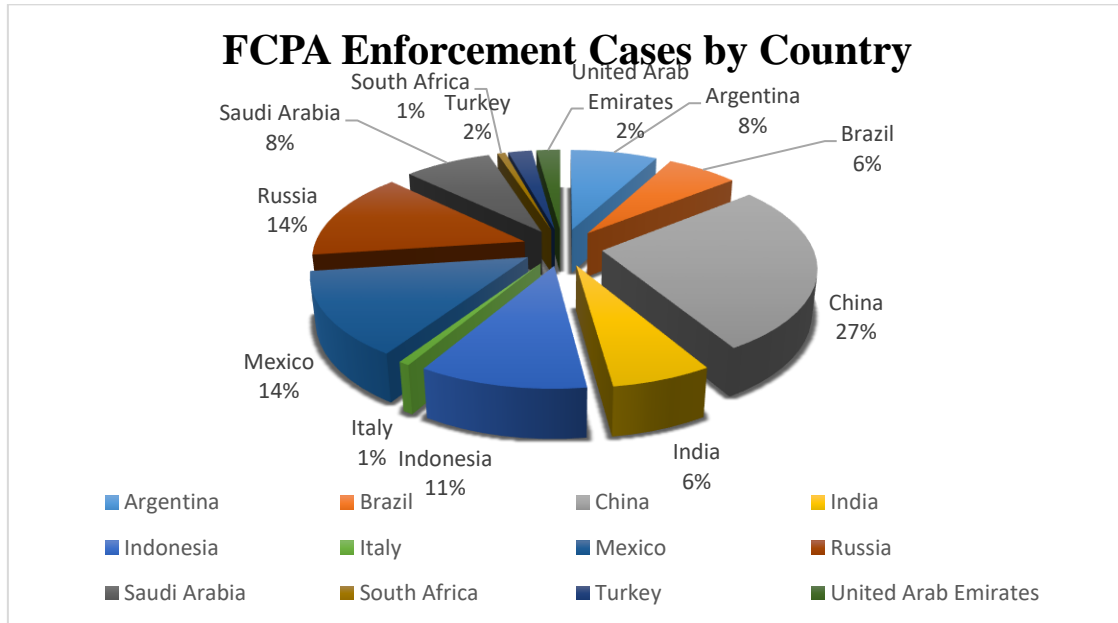


Figure 2B

FCPA Enforcement Cases by Country

