

Doing Business in Russia under the FCPA or Bribery Act

As reported by Andres Kramer in Tuesday's New York Times, in an article entitled, "*Russia, Facing Big Budget Gap, Warms to Foreign Investors*", the Russian government is actively seeking foreign capital and foreign investors. The article mentioned that several state-owned enterprises are up for investment. It is reported that the state owned bank VTB; the state-owned oil company Rosneft and the state-owned national hydro-electric RusHydro, among others are seeking foreign investment.

While these offerings may produce significant business opportunities, Kramer notes that doing business in Russia still presents significant risks. He reports that the British political risk consulting firm Maplecroft "ranked Russia 186th out of 196 countries for political risk to business". The Transparency International Corruption Perceptions Index for 2010, released in November 2010, gives Russia a score of 2.1 or number 154 out of 178 countries rated.

The Consultative Guidance on an adequate procedures program on the Bribery Act lists geographic risk as one of the key risks to be assessed for compliance purposes. This means that any US company contemplating such an investment, or UK company which will soon be subject to the Bribery Act, will need to carefully tread in any investment. Yesterday at the ACI FCPA Boot Camp in Houston, Michael Volkov, noted FCPA attorney from the firm of Mayer Brown, spoke on a panel with Ryan Morgan, of World Compliance, on the topic of due diligence on third parties. Many of Volkov's remarks are applicable for US or UK companies which may wish to invest in Russian companies. Volkov believes the key all compliance based issues is to document the evidence. If you ask questions and get answers, document the process. If you ask questions and do not receive answers, document that process too. But the key is to Document, Document, and Document.

Volkov believes that the entire process of screening and evaluation of a new third party relationship should be done at the highest level possible within a corporation. This means in the General Counsel's office; the Chief Compliance Officer or other equally high office trained to not only perform due diligence but also evaluate the risk. This centralized review should also include a centralized review of contracts to ensure consistent standards. He emphasized that the in-country business unit should not be allowed to handle this task. He noted that after the relationship is established you can set up a different standard for monitoring the relationship going forward. The key in this post-contract execution area is that if you detect a problem, then how does your company deal with the problem? Once again he emphasized Document, Document, and Document.

Volkov gave his thoughts on some of the basic pieces of information to cover when a company might begin the due diligence process. This would include:

1. Existence of relationships with foreign governmental officials.
2. Prior history of bribery or other crimes.
3. What is the nature of services provided?
4. What is the compensation and what will be the payment method?
5. Have a written contract in place with appropriate terms and condition's including:
 - a. Reps and Warranties on compliance;
 - b. Right to inspect and audit books and records; and
 - c. Right to terminate if you believe that a violation has occurred.

As noted by the Kramer in his Times piece, there may be great opportunity for investment. However the risks for such investment, both political and those in the areas of anti-corruption and anti-bribery, as prohibited by the Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act may also be great. Some companies may find that their risk appetite is not large enough for such an opportunity. We can only end with the words of Ronald Reagan, in a different type of transaction he conducted with the then Soviet Union, "Trust, but verify."

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