

ethikos Volume 33, Number 1. January 31, 2019 An unintentional act of bribery

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Why were the bribery and corruption laws created? In simple words, they are rules for dealing with people who have influenced or attempted to influence decision makers who manage positions of power (e.g., public officials) for their personal motives. Influence can range from direct cash to favors for the period of now to future. Some laws penalize the giver and some penalize both the giver and receiver.

An investigator needs to prove the following elements in order to prove a bribe or corruption has taken place:

- Did the offering (“gift”) involve receiving or soliciting?
- Was the act committed directly or indirectly (i.e., directly paid or paid through an intermediary)?
- Was the offering anything of value? This is a tricky one. Was it anything besides money and/or goods to gain tangible benefits with corrupt intent (e.g., donation to charitable organization, lease deeds, study tours for the receivers’ children)?
- Was the “favor” offered to improperly influence with corrupt intent? This element can be proven circumstantially by when the favor was exchanged (e.g., was it during a bidding process?). Intent is difficult to prove if no circumstances can be proven.
- What were the further actions of another party, basically what was the benefit or ripe fruit? Did the proceedings go through?

Dutch telecom provider VimpelCom Ltd. (now known as VEON Ltd.) paid \$795 million (USD) to settle charges associated with bribing a government official in Uzbekistan.^[1] Half of the settlement went to two U.S. agencies—the Securities and Exchange Commission and the Department of Justice—for violations of the Foreign Corrupt Practices Act (FCPA), while the other half went to Dutch authorities.

Two critical factors should be noted here. First is the involvement of the U.S. in its application of the FCPA to a non-U.S. company. By having its securities registered for sale in the U.S., VimpelCom falls under the FCPA. In addition, some of the funds used to pay bribes passed through U.S. banks prior to arriving in European institutions (Dutch bank ING Groep NV was later penalized by Dutch prosecutors for failing to spot money laundering), and some of the communications used e-mail accounts on U.S.-based servers. The second factor is that intent was proven through a significant amount of circumstantial evidence. For example, the perpetrator

was aware of the FCPA but proceeded with the transactions. Further, the bribed individual was a relative of the President of Uzbekistan and had influence over the Uzbek telecommunications regulator. They enjoyed their honeymoon from 2006 (when VimpelCom was still based in Russia) to 2012.

In another case, California based Sun-Diamond Growers were charged with bribery for giving gifts to Agriculture Secretary, Mike Espy.^[2] In his defense, Secretary Espy said since he got the gifts from his friend and lobbyist Richard Douglas, he assumed the gifts were acts of personal friendship. He also said he was not even aware that the gifts were paid for by Sun-Diamond.

The Supreme Court ruled that giving gifts to officials does not amount to bribery unless there is an “official act” in return for the gifts and overturned conviction in the case.

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