

A BOARD GUIDE

Anti-Corruption & the FCPA

What boards need to know about bribery risk, the company's exposure through third parties, and what an effective program looks like

Corruption Risk Hasn't Gone Away

Enforcement posture shifts—but the law, and the exposure, remain

- **The law is still on the books.** The FCPA—and its accounting and internal-controls provisions—remain fully in force, whatever the enforcement priorities of the day.
- **It's a global regime.** The UK Bribery Act and other countries' laws reach the same conduct, often more broadly, and they keep enforcing.
- **Liability runs to individuals—and successors.** Executives can be charged personally, and acquirers can inherit a target's corruption liabilities.
- **Programs are still expected.** Regulators, investors, and counterparties expect a real anti-corruption program—dismantling one is a risk in itself.

THE BOTTOM LINE

Enforcement priorities change.

Corruption risk—and the cost of getting it wrong—does not.

What the FCPA Prohibits

Two distinct sets of obligations—most companies focus only on the first

Anti-Bribery

No corrupt payments

- No corruptly giving—or offering—anything of value
- To a foreign official
- To obtain or retain business
- Reaches conduct through third parties

Books, Records & Controls

Accurate books; real controls

- Keep books and records that fairly reflect transactions
- Maintain a system of internal accounting controls
- Applies to issuers regardless of any bribe
- Where most enforcement actually lands

Four Terms That Decide Liability

The FCPA's reach is broader than most people assume

“Foreign official”

Read broadly—includes employees of state-owned or state-controlled enterprises, and often their family members.

“Anything of value”

Not just cash—gifts, travel, lavish hospitality, jobs or internships, and even charitable donations can count.

Facilitation payments

A narrow exception for routine government action—disfavored, easily abused, and illegal under many other regimes.

“Obtain or retain business”

Construed broadly—any improper business advantage, not just winning a specific contract.

Most Exposure Flows Through Third Parties

You can be liable for what your agents and partners do



- **“Knowing” includes willful blindness.** Ignoring obvious red flags is treated as knowledge—you can’t outsource the risk and look away.
- **Diligence and controls are the answer.** Vet third parties, paper the relationship, watch the payments, and require anti-corruption commitments.

Common Corruption Red Flags

Any one warrants a closer look; several together demand it

High-risk country or sector

Government customer or approval

Vague or inflated invoices

Unusually large commissions

Payments to offshore accounts

Third party recommended by an official

Refusal to certify compliance

Family ties to government officials

Agent added late, under time pressure

Requests for cash or “urgent” fees

No clear business rationale

Lack of transparency on ownership

Hallmarks of an Effective Program

The elements regulators look for—and that actually prevent problems

Set the tone

- Tone from the top and middle
- A clear anti-corruption policy
- Risk-based, regularly assessed

Build the controls

- Third-party due diligence
- Gifts, travel & hospitality limits
- Payment and approval controls

Prove it works

- Training and guidance
- Monitoring, auditing, and testing
- Investigate, discipline, remediate

Enforcement in 2025–2026

The posture shifted—but don't mistake a pause for permission

Feb 2025

Executive order pauses new FCPA investigations and actions for review

June 2025

DOJ issues revised guidelines—tailoring enforcement to U.S. interests, not ending it

2025–26

Matters resume; accounting provisions still enforced; charges proceed

Throughout

Other countries—and successor and individual liability—keep the risk live

The takeaway: a company that dismantles its program during a pause is exposed when the posture turns again—and to every other regime in the meantime.

United States v. Rovirosa

An FCPA conviction set aside—and what it signals for companies

THE RESULT

Judgment of Acquittal

After a jury verdict, the court entered a Rule 29(c) ***judgment of acquittal***, setting aside the convictions. R. McConnell Group represented the defendant at trial (Ryan McConnell, lead; Matthew Boyden; Lawrence Finder).

WHAT IT MEANS FOR BOARDS

- **The elements still have to be proven.** Agreement, knowledge, authorization, and an improper purpose—gaps in any one can defeat a case.
- **Cross-border evidence is fragile.** Cases built on foreign-language texts turn on translation accuracy—and the right to test it in court.
- **Records and context matter.** Clean records, controlled third-party communications, and the ability to explain context are a company's best protection.
- **Process is a real defense.** Confrontation, discovery, and expert-qualification rules can be decisive at trial.

Five Questions to Ask

How a board tests its anti-corruption program

Do we know our risk?

A current, risk-based assessment by geography, sector, and third-party use.

Do we vet third parties?

Due diligence, contract terms, and monitoring of agents and partners.

Are gifts and payments controlled?

Clear limits and approvals for hospitality, travel, and donations.

Do we test and act?

Monitoring, auditing, and real consequences when issues surface.

And the real test: *if an agent paid a bribe tomorrow, would our program have caught it—or be the reason we're not charged?*