**The Prevention of Corruption Act 1947:**

5. Criminal misconduct in discharge of official duty- (1) A public servant is said to commit the offence of criminal misconduct: —

(a) if he habitually accepts or obtains on agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person; any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been; or to be, or to be likely to be "concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(e) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income

**Comment:**  This gives us the clear idea or definition of criminal misconduct. An employee of public or private organization can be said involved in criminal misconduct only if, he uses his administrative power for unethical purposes in exchange of any sort of financial or advantages or any other benefits earned rather than his legal remuneration.

Page-03

**U.S. Foreign Corrupt Practices Act**

OECD (Organization for Economic Co-operation and Development) Working Group on Bribery and the Anti-Bribery Convention The OECD was founded in 1961 to stimulate economic progress and world trade. As noted, the Anti-Bribery Convention requires its parties to criminalize the bribery of foreign public officials in international business transactions.31 As of November 1, 2012, there were 39 parties to the Anti-Bribery Convention: 34 OECD member countries (including the United States) and five non-OECD member countries (Argentina, Brazil, Bulgaria, the Russian Federation, and South Africa). All of these parties are also members of the OECD Working Group on Bribery (Working Group).32 The Working Group is responsible for monitoring the implementation of the Anti-Bribery Convention, the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, and related instruments. Its members meet quarterly to review and monitor implementation of the Anti-Bribery Convention by member states around the world. Each party undergoes periodic peer review.33 This peer-review monitoring system is conducted in three phases. The Phase 1 review includes an in-depth assessment of each country’s domestic laws implementing the Convention. The Phase 2 review examines the effectiveness of each country’s laws and anti-bribery efforts. The final phase is a permanent cycle of peer review (the first cycle of which is referred to as the Phase 3 review) that evaluates a country’s enforcement actions and results, as well as the country’s efforts to address weaknesses identified during the Phase 2 review.34 All of the monitoring reports for the parties to the Convention can be found on the OECD website and can be a useful resource about the foreign bribery laws of the OECD Working Group member countries.

Page -16

Comments: City Bank can follow the model and develop similar sorts of model in the organization against bribery and commission

Who Is Covered by the Anti-Bribery Provisions? The FCPA’s anti-bribery provisions apply broadly to three categories of persons and entities: (1) “issuers” and their officers, directors, employees, agents, and shareholders; (2) “domestic concerns” and their officers, directors, employees, agents, and shareholders; and (3) certain persons and entities, other than issuers and domestic concerns, acting while in the territory of the United States.

Page-19

Comments: City Bank can determine three prospect of bank for developing any anti-bribery and corruption policy. 1. Bank Officials, 2. Customers, 3. Supplier/Vendor and other stakeholders

Examples of Actions Taken to Obtain or Retain Business

 Winning a contract

 Influencing the procurement process

 Circumventing the rules for importation of products

 Gaining access to non-public bid tender information

 Evading taxes or penalties

 influencing the adjudication of lawsuits or enforcement actions

 Obtaining exceptions to regulations

 Avoiding contract termination

Page-22

Comments: if we consider individual perspective, we may consider these issues but as a whole bank it was not considerable cause at the end of the day only few people can get benefit but not whole bank. But to prevent such actions we may consider some points of it.

**Paying Bribes to Customs Officials**

In 2010, a global freight forwarding company and six of its corporate customers in the oil and gas industry resolved charges that they paid bribes to customs officials The companies bribed customs officials in more than ten countries in exchange for such benefits as:

 evading customs duties on imported goods

 Improperly expediting the importation of goods and equipment

 extending drilling contracts and lowering tax assessments

 obtaining false documentation related to temporary import permits for drilling rigs

 enabling the release of drilling rigs and other equipment from customs officials

In many instances, the improper payments at issue allowed the company to carry out its existing business, which fell within the FCPA’s prohibition on corrupt payments made for the purpose of “retaining” business, The seven companies paid a total of more than $235 million in civil and criminal sanctions and disgorgement

Page-22

Comments: Not applicable for City bank. First action authority in this case is national Revenue board and customs house

What Does “**Corruptly**” Mean? To violate the FCPA, an offer, promise, or authorization of a payment, or a payment, to a government official must be made “corruptly.”74 As Congress noted when adopting the FCPA, the word “corruptly” means an intent or desire to wrongfully influence the recipient:

The word “corruptly” is used in order to make clear that the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position; for example, wrongfully to direct business to the pay or or his client, to obtain preferential legislation or regulations, or to induce a foreign official to fail to perform an official function.

Comments: We may relate this point with city bank between staff and other concerns in case of bribery and corruption

Page-23

What Does “**Willfully**” Mean and When Does It Apply? In order for an individual defendant to be criminally liable under the FCPA, he or she must act “willfully.”81 Proof of willfulness is not required to establish corporate criminal or civil liability,82 though proof of corrupt intent is. The term “willfully” is not defined in the FCPA, but it has generally been construed by courts to connote an act committed voluntarily and purposefully, and with a bad purpose, i.e., with “knowledge that [a defendant] was doing a ‘bad’ act under the general rules of law.”83  As the Supreme Court explained in Bryan v. United States, “[a]s a general matter, when used in the criminal context, a ‘willful’ act is one undertaken with a ‘bad purpose.’  In other words, in order to establish a ‘willful’ violation of a statute, ‘the Government must prove that the defendant acted with knowledge that his conduct was unlawful

Page-23-24

Comments: to prove the act related to bribery and corruption this point needed to consider

What Does “Anything of Value” Mean? In enacting the FCPA, Congress recognized that bribes can come in many shapes and sizes—a broad range of unfair benefits86—and so the statute prohibits the corrupt “offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to” a foreign official.87 An improper benefit can take many forms. While cases often involve payments of cash (sometimes in the guise of “consulting fees” or “commissions” given through intermediaries), others have involved travel expenses and expensive gifts. Like the domestic bribery statute, the FCPA does not contain a minimum threshold amount for corrupt gifts or payments.88 Indeed, what might be considered a modest payment in the United States could be a larger and much more significant amount in a foreign country.

Comments: This portion we may take also into consideration to identify whether there any corruption happening or not

**Hypothetical: Gifts, Travel, and Entertainment**

Page-24

Comments: This section is not related to financial institutions.

**How Are Payments to Third Parties Treated?** The FCPA expressly prohibits corrupt payments made through third parties or intermediaries. Specifically, it covers payments made to “any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly,”130 to a foreign official. Many companies doing business in a foreign country retain a local individual or company to help them conduct business.

Page-30

Comments: it’s a very good point to note in preparing anti-bribery and corruption policy

**What Affirmative Defenses Are Available?** The FCPA’s anti-bribery provisions contain two affirmative defenses: (1) that the payment was lawful under the written laws of the foreign country (the “local law” defense), and (2) that the money was spent as part of demonstrating a product or performing a contractual obligation (the “reasonable and bona fide business expenditure” defense). Because these are affirmative defenses, the defendant bears the burden of proving them.

Page :32

Comments: There are different divisions in City bank to overlook the matter. Like legal division, AML division etc. So it could be a good part for proposed anti- bribery and corruption policy

**Principles of Corporate Liability for Anti-Bribery Violations**: General principles of corporate liability apply to the FCPA. Thus, a company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company.177 Similarly, just as with any other statute, DOJ and SEC look to principles of parent-subsidiary and successor liability in evaluating corporate liability.

**Parent-Subsidiary Liability** : There are two ways in which a parent company may be liable for bribes paid by its subsidiary. First, a parent may have participated sufficiently in the activity to be directly liable for the conduct—as, for example, when it directed its subsidiary’s misconduct or otherwise directly participated in the bribe scheme. Second, a parent may be liable for its subsidiary’s conduct under traditional agency principles. The fundamental characteristic of agency is control.178 Accordingly, DOJ and SEC evaluate the parent’s control—including the parent’s knowledge and direction of the subsidiary’s actions, both generally and in the context of the specific transaction— when evaluating whether a subsidiary is an agent of the parent. Although the formal relationship between the parent and subsidiary is important in this analysis, so are the practical realities of how the parent and subsidiary actually interact. If an agency relationship exists, a subsidiary’s actions and knowledge are imputed to its parent.179 Moreover, under traditional principles of respondeat superior, a company is liable for the acts of its agents, including its employees, undertaken within the scope of their employment and intended, at least in part, to benefit the company.180 Thus, if an agency relationship exists between a parent and a subsidiary, the parent is liable for bribery committed by the subsidiary’s employees. For example, SEC brought an administrative action against a parent for bribes paid by the president of its indirect, wholly owned subsidiary. In that matter, the subsidiary’s president reported directly to the CEO of the parent issuer, and the issuer routinely identified

the president as a member of its senior management in its annual filing with SEC and in annual reports. Additionally, the parent’s legal department approved the retention of the third-party agent through whom the bribes were arranged despite a lack of documented due diligence and an agency agreement that violated corporate policy; also, an official of the parent approved one of the payments to the third-party agent.181 Under these circumstances, the parent company had sufficient knowledge and control of its subsidiary’s actions to be liable under the FCPA.

Comments: we can use it portion to prevent Bank owners to use their organization to get any personal financial benefit to them

**Additional Principles of Civil Liability for Anti-Bribery Violations:** Aiding and Abetting and Causing Both companies and individuals can be held civilly liable for aiding and abetting FCPA anti-bribery violations if they knowingly or recklessly provide substantial assistance to a violator.204 Similarly, in the administrative proceeding context, companies and individuals may be held liable for causing FCPA violations.205 This liability extends to the subsidiaries and agents of U.S. issuers. In one case, the U.S. subsidiary of a Swiss freight forwarding company was held civilly liable for paying bribes on behalf of its customers in several countries.206 Although the U.S. subsidiary was not an issuer for purposes of the FCPA, it was an “agent” of several U.S. issuers. By paying bribes on behalf of its issuers’ customers, the subsidiary both directly violated and aided and abetted the issuers’ FCPA violations.

Comments: In case of providing unethical support to highly risky borrower, this act can be fruitful to develop more effective anti-bribery and corruption policy for city bank

**THE FCPA: ACCOUNTING PROVISIONS:**

The accounting provisions consist of two primary components. First, under the “books and records” provision, issuers must make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect an issuer’s transactions and dispositions of an issuer’s assets.213 Second, under the “internal controls” provision, issuers must devise and maintain a system of internal accounting controls sufficient to assure management’s control, authority, and responsibility over the firm’s assets

**What Is Covered by the Accounting Provisions?**

1. Books and Records Provision
2. Internal Controls Provision

Page:48-49

Comments: Very important need to take consideration for establishing a proper anti-bribery and corruption policy for City Bank

**Potential Reporting and Anti-Fraud Violations**: Issuers have reporting obligations under Section 13(a) of the Exchange Act, which requires issuers to file an annual report that contains comprehensive information about the issuer. Failure to properly disclose material information about the issuer’s business, including material revenue, expenses, profits, assets, or liabilities related to bribery of foreign government officials, may give rise to anti-fraud and reporting violations under Sections 10(b) and 13(a) of the Exchange Act.

Page:50

Comments: Very important need to take consideration for establishing a proper anti-bribery and corruption policy for City Bank

**What Are Management’s Other Obligations?**

**Sarbanes-Oxley Act of 2002**

Page: 51

Comments: Very important need to take consideration for establishing a proper anti-bribery and corruption policy for City Bank

**Civil Liability for Individuals and Other Entities:**

Page: 52

Comment: This section describes how individual acts affect companies reputation and when we prepare an ABC policy, we must consider all those things which can hamper organizational reputation

**Auditor Obligations:**

Comments: Integral part of every financial organizations .Auditors report is one of the important financial reports where all deficiencies will come up with recommendations. This will help to prepare a proper ABC policy for City Bank

Page-54

**Money Laundering:**

Page-57

Comments: Different team and department look over the issue through analyzing different reports and when we will establish a proper ABC policy, Money Laundering is a key issue to consideration

**Certification and Reporting Violations:**

Comments: Any kind of violation in preparing report and certification is a subject of corruption and in ABC policy it must be highlighted for maintaining customer trust on organization

**Chapter 5: Guiding Principles of Enforcement:**

Page: 61

Comments: This is actually how actually enforcement agencies set laws again anti-bribery and corruption in financial institutions and based on the laws, banks prepare their ABC policy. We need to know what actually our laws saying in case of any corruption and bribery activities

**What Does SEC Consider When Deciding Whether to Open an Investigation or Bring Charges?**

Page: 62

Comments: This part gives us a light to obtain information about bribes and corruption for getting necessary action for prevention. Depending on the information received from different sources, Bank may decide whether to investigate/Charge or not. ABC policy will also develop based on the scenario briefed in this section

**Self-Reporting, Cooperation, and Remedial Efforts:**

Page: 63

Comments: In proposed Policy of Anti-bribery and corruption there must be some guidelines for preventing any future occurrence and in policy it needs to be specifically mentioned about remedies and guidelines for avoidance of any further incidents to protect bank from any financial and reputational damage

SEC’s Framework for Evaluating Cooperation by Companies & Individuals:

Page: 64

Comments: In proposed Policy of Anti-bribery and corruption there must be some guidelines which will evaluate the whole organization and individual about their cooperation in any bribery and corruption related issues investigated by Bank as well as government authorities

**Corporate Compliance Program**: In a global marketplace, an effective compliance program is a critical component of a company’s internal controls and is essential to detecting and preventing FCPA violations.300 Effective compliance programs are tailored to the company’s specific business and to the risks associated with that business. They are dynamic and evolve as the business and the markets change. An effective compliance program promotes “an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”301 Such a program protects a company’s reputation, ensures investor value and confidence, reduces uncertainty in business transactions, and secures a company’s assets.302 A well-constructed, thoughtfully implemented, and consistently enforced compliance and ethics program helps prevent, detect, remediate, and report misconduct, including FCPA violations. In addition to considering whether a company has self-reported, cooperated, and taken appropriate remedial actions, DOJ and SEC also consider the adequacy of a company’s compliance program when deciding what, if any, action to take. The program may influence whether or not charges should be resolved through a deferred prosecution agreement (DPA) or non-prosecution agreement (NPA), as well as the appropriate length of any DPA or NPA, or the term of corporate probation. It will often affect the penalty amount and the need for a monitor or self-reporting

Page: 65

Comments: This is very important feature for developing any ABC policy. This emphasizes on the culture that helps to prevent organization from any kind of bribery and corruption activity

**Commitment from Senior Management and a Clearly Articulated Policy against Corruption:**

Page: 66

**Code of Conduct and Compliance Policies and Procedures**:

Page: 66

Comments: One of the most important parts for preparing any ABC policy which emphasizes the motive of senior management to prevent bribery and corruption and code of conducts that helps us to guide everyone to know what should do and do not.

**Risk Assessment:**

Page: 67

Assessment of risk is fundamental to developing a strong compliance program, and is another factor DOJ and SEC evaluate when assessing a company’s compliance program.317 One-size-fits-all compliance programs are generally ill-conceived and ineffective because resources inevitably are spread too thin, with too much focus on low risk markets and transactions to the detriment of high-risk areas.

Comments: Before establishing a proper ABC policy it is very much needed to assess the risk of all segments of organization to identify how it actually impact overall organization

**Training and Continuing Advice:**

Page: 68

**Incentives and Disciplinary Measures:**

Page: 68

**Third-Party Due Diligence and Payments:**

Page: 69

Comments: Each of the point’s needed to take consideration during the preparation of any ABC policy. Absence of above points and lack of proper structure for third party payment may rise scope of bribery and corruption

**Civil Penalties:**

Comments/; This section will help to introduce some guidelines in the newly approaching ABC policy about the punishment apply for the concern parties who will perform bribery and corruption activities under Bank’s own rules and regulations. Major decision will be taken by central bank and jurisdiction

**RESOLUTIONS**

**What Are the Different Types of Resolutions with DOJ:**

Page 83-84

Comments: This section helps us to identify the severity of cases which will be solved within Bank’s own law and which will be sending to central bank and court for proper justice

**WHISTLEBLOWER PROVISIONS AND PROTECTIONS:**

The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Act of 2010 both contain provisions affecting whistleblowers who report FCPA violations. Sarbanes-Oxley prohibits issuers from retaliating against whistleblowers and provides that employees who are retaliated against for reporting possible securities law violations may file a complaint with the Department of Labor, for which they would be eligible to receive reinstatement, back pay, and other compensation.390 Sarbanes-Oxley also prohibits retaliation against employee whistleblowers under the obstruction of justice statute.391 In 2010, the Dodd-Frank Act added Section 21F to the Exchange Act, addressing whistleblower incentives and protections. Section 21F authorizes SEC to provide monetary awards to eligible individuals who voluntarily come forward with high quality, original information that leads to an SEC enforcement action in which over $1,000,000 in sanctions is ordered. 392 The awards range is between 10% and 30% of the monetary sanctions recovered by the government. The Dodd-Frank Act also prohibits employers from retaliating against whistleblowers and creates a private right of action for employees who are retaliated against.393 Furthermore, businesses should be aware that retaliation against a whistleblower may also violate state, local, and foreign laws that provide protection of whistleblowers.

On August 12, 2011, the final rules for SEC’s Whistleblower Program became effective. These rules set forth the requirements for whistleblowers to be eligible for awards consideration, the factors that SEC will use to determine the amount of the award, the categories of individuals who are excluded from award consideration, and the categories of individuals who are subject to limitations in award considerations.394 The final rules strengthen incentives for employees to report the suspected violations internally through internal compliance programs when appropriate, although it does not require an employee to do so in order to qualify for an award

Comments: This portion makes ABC policy more effective as it encourages individuals to come up with the information of violation and arrange monetary reward for them who actually bring notice to the management against bribery and corruption

**Bribery Act 2010:**

1 Offences of bribing another person (1) A person (“P”) is guilty of an offence if either of the following cases applies. (2) Case 1 is where— (a) P offers, promises or gives a financial or other advantage to another person, and (b) P intends the advantage— (i) to induce a person to perform improperly a relevant function or activity, or (ii) to reward a person for the improper performance of such a function or activity. (3) Case 2 is where— (a) P offers, promises or gives a financial or other advantage to another person, and (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity. (4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

**United Kingdom Bribery Act 2010 :**

In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

**Offences relating to being bribed** :(1) A person (“R”) is guilty of an offence if any of the following cases applies. (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person). (3) Case 4 is where— (a) R requests, agrees to receive or accepts a financial or other advantage, and (b) the request, agreement oracceptance itself constitutes the improper performance by R of a relevant function or activity. (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity. (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly— (a) by R, or (b) by another person at R’s request or with R’s assent or acquiescence. (6) In cases 3 to 6 it does not matter— (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party, (b) whether the advantage is (or is to be) for the benefit of R or another person.

**Comment:** This clarifies a person to be held guilty for bribery; either he/she offers financial or other advantage to someone for completion of unlawful act and also the person who is offered such thing to do so or by a third party. Thus City Bank employees must try not to rely under this characterization.

**Improper performance to which bribe relates**: (1) For the purposes of this Act a relevant function or activity— (a) is performed improperly if it is performed in breach of a relevant expectation, and (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation. (2) In subsection (1) “relevant expectation”— (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition. (3) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity

Meaning of associated person (1) For the purposes of section 7, a person (“A”) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C. (2) The capacity in which A performs services for or on behalf of C does not matter. (3) Accordingly A may (for example) be C’s employee, agent or subsidiary. (4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C. (5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

Comment: All kinds of banking contracts must be fulfilled properly and within due timeline. Because improper performance may tend to bribery acts as well. We’ve already seen in Section 1 (3) B: improper performance itself is a bribery act in exchange of financial or any sort of benefits.

7 Failure of commercial organizations to prevent bribery

(1) A relevant commercial organization (“C”) is guilty of an offence under this

section if a person (“A”) associated with C bribes another person intending—

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures

designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A—

(a) is, or would be, guilty of an offence under section 1 or 6 (whether or not

A has been prosecuted for such an offence), or

(b) Would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

(4) See section 8 for the meaning of a person associated with C and see section 9

for a duty on the Secretary of State to publish guidance.

(5) In this section—

“Partnership” means—

(a) A partnership within the Partnership Act 1890, or

(b) A limited partnership registered under the Limited Partnerships

Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom, “relevant commercial organization” means—

(a) A body which is incorporated under the law of any part of the

United Kingdom and which carries on a business (whether there or elsewhere),

(b) Any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) A partnership which is formed under the law of any part of the

United Kingdom and which carries on a business (whether there or elsewhere), or

(d) Any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and, for the purposes of this section, a trade or profession is a business.

**Comment:** Our organization relies under the Banking industry category. To defend itself from such bribery acts our Bank must establish strong Bribery and Corruption policies in accordance to the local as well as international conventions to keep itself up to date. Continued HR Awareness Mails, adequate training sessions and fact findings from any internal mishaps will lower the risk for this organization gradually.

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