

FCPA TRAINING AS A CATALYST FOR BUSINESS SUCCESS IN AFRICA

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The African continent today is a land of vast opportunity. The US government views Sub-Saharan Africa as “the world’s next major economic success story that offers enormous opportunities for American businesses.” The Council on Foreign Relations stated that “U.S. trade to and from Africa has tripled over the past decade and U.S. exports to sub-Saharan Africa now top \$21 billion.” Also, Africa is home to six of the ten fastest-growing economies in the world. These six selected based on their increasing GDP between 2014 and projected 2017, are: Ethiopia, Democratic Republic of Congo, Cote d’Ivoire, Mozambique, Tanzania and Rwanda.

When was the last time you heard that corruption was ubiquitous and rampant all over sub-Saharan Africa? Probably just yesterday! The African continent today is a land of both vast business opportunity and significant risks due to corruption. Nevertheless, U.S. and other foreign investors should not let the challenges hold them back from reaping the lucrative openings that the African region offers now and in the future.

Fear it or love it, the Foreign Corrupt Practices Act (FCPA) has been around since 1977. It has up to now made overall mixed results in Africa. As a general piece of advice, companies should avoid panicking because of the fear of FCPA. Training in FCPA compliance is not new. And yes, it helps companies succeed. You have probably sat in one of those classes or taken online FCPA training. But experience indicates that U.S. companies’ training fall short in two areas concerning Africa.

The first mistake companies make is to take generic FCPA compliance training. In Sub-Saharan Africa, training must be customized and specific to include the inner cultures of the region. Cultures dictate how people conduct themselves socially but also in business. African cultures are based on proverbs. Prior to the introduction of written laws by European colonization of the region, Africans relied on cultural proverbs to resolve disputes. If one can find a proverb that supports a behavior, that behavior is thus validated. In a recent communication with a local government official, one of my clients noted that the official repeatedly stated this well sprayed proverb, “*A lie that builds is better than a truth that destroys.*” He did not grasp what this meant in the context of the business conversation that they were having. FCPA-specific compliance on Africa must include clear presentation of general cultural insights and values of the people as well as strategies to avoid real examples of business leaders who got in trouble due to cultural faux-pas.

The second major mistake that most companies make is the failure to provide FCPA-compliance training to their local partners, consultants and employees. To some local professionals, corruption is simply the normal “way of doing business here.” They do not know any better. But while this mindset may be deeply embedded in the local cultures, companies are nevertheless liable if their employees are involved in corruption. In order to reach the majority of employees, it is crucial and more effective that local managers be trained in FCPA guidelines so that they can discuss compliance with local employees and make it clear that they too may personally fall under the jurisdiction of the statute. The Department of Justice has always taken the position that training of everyone involved in the company is an integral piece of FCPA compliance. Again, this training must be customized to include bridges between the law and the local cultures.

Reagan R. Demas, Partner at Baker & McKenzie International in Washington, DC, advises, “Demonstrated commitment to (FCPA) compliance provides companies with a growing competitive advantage when conducting business in Africa. Despite the often daunting anti-corruption hazards of working in Africa, the continent offers substantial opportunities for companies that effectively identify and manage those risks.”

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