

May 2017

# IS FCPA GUIDANCE ENOUGH?

PRESENTED BY:  
**TOM SCHUMACHER**, CHIEF ETHICS & COMPLIANCE OFFICER



**Medtronic**

# IS FCPA GUIDANCE ENOUGH?

Increase in number and scope of Anti-Bribery and Anti-Corruption laws and regulations

<b>U.S.</b>	Canada	Mozambique	France	India	Argentina
<b>China</b>	France	South Africa	Italy	Indonesia	Brazil
<b>India</b>	Singapore	Australia	The Netherlands	Laos	Chile
<b>Germany</b>	Thailand	Hong Kong	Poland	Malaysia	Colombia
<b>U.K.</b>	Mexico	Japan	Russia	Myanmar	Ecuador
	Italy	South Korea	Spain	Philippines	Uruguay
	Russian	Taiwan	Saudi Arabia	Singapore	Venezuela
	Ukraine	Austria	United Arab	Thailand	
	Kenya	Belgium	Emirates	Timor-Leste	
				Vietnam	

# ANTI-BRIBERY/ANTI-CORRUPTION LAWS AND REGULATIONS

## COMMON THEMES

### Key Building Blocks to Program Effectiveness:

- Analysis of underlying misconduct
- Senior and middle management
- Autonomy and resources
- Operational integration
- Accessibility of policies and procedures
- Continuous improvement, testing and review



U.S. Department of Justice  
Criminal Division  
Fraud Section

#### Evaluation of Corporate Compliance Programs

##### Introduction

The Principles of Federal Prosecution of Business Organizations in the United States Attorney's Manual describe specific factors that prosecutors should consider in conducting an investigation of a corporate entity, determining whether to bring charges, and negotiating plea or other agreements. These factors, commonly known as the "Filip Factors," include "the existence and effectiveness of the corporation's pre-existing compliance program" and the corporation's remedial efforts "to implement an effective corporate compliance program or to improve an existing one."

*"When you say you have a great compliance portal, don't just show us screenshots of it. Show us the hit rates and how you use that data to help you refine how you communicate with your audience."*

*Hui Chen, June 2017*

# GLOBAL SCAN

## ISSUES: SIMILARITIES AND DIFFERENCES

	BRAZIL	CHINA	FRANCE	GERMANY	MEXICO	UNITED KINGDOM	UNITED STATES
<b>Prohibited Conduct: Offer and Acceptance of Bribes</b>	Direct/indirect bribery of domestic & foreign agents; Accepting bribes <i>not</i> prohibited	Bribery of public entities and officials; Accepting or soliciting bribes prohibited	Bribery of any person (not limited to public sector); Accepting or soliciting bribes prohibited	Bribery of any person in the German/EU public sector; also prohibits bribery of employees or agents in a business transaction to induce competitive advantage Accepting or soliciting bribes prohibited	Bribery of domestic and foreign officials; Accepting or soliciting bribes prohibited	Bribery of any person (not limited to public sector) Accepting or soliciting bribes prohibited	Bribery of non-US gov't official to obtain/retain business. Accepting bribes not prohibited under FCPA (but prosecuted under other laws)
<b>Knowledge Requirement</b>	None – strict liability (bidding laws require intent)	Requires intent to commit administrative offence	Requires corrupt intent	Requires corrupt intent for criminal offense	Requires corrupt intent	None for bribery of foreign officials, other cases requires intent of improper conduct	Requires corrupt intent
<b>Facilitation Payments</b>	Not permissible	Generally impermissible	Not permissible	Generally impermissible	Not permissible	Not permissible	Permissible in narrow circumstances only

# GLOBAL SCAN

## ISSUES: SIMILARITIES AND DIFFERENCES

	BRAZIL	CHINA	FRANCE	GERMANY	MEXICO	UNITED KINGDOM	UNITED STATES
<b>Adequate Procedures in Place to Prevent Bribery Required</b>	Not mandatory but mitigating factor	Not a defense but may be mitigating factor (case-by-case)	Not a defense but may be mitigating factor (case-by-case)	No corporate criminal liability but administrative offense if company does not have an effective compliance program to avoid bribery	Not mandatory but mitigating factor	Defense for failing to prevent bribery offenses, case-by-case for other offenses	Not a statutory defense but is a legal defense to charges and may be mitigating factor
<b>Penalties</b>	<p><u>Individuals</u>: 2-12 years (or more) in prison and fines</p> <p><u>Entities</u>: fines from .1 to 20% gross profit. Suspension, debarment or company dissolution also possible</p>	<p><u>Individuals</u>: Up to life in prison for bribery of public officials, up to 10 years for non-public officials. Receiving bribes: up to death penalty</p> <p><u>Entities</u>: Unlimited fines, up to 5 years in prison, confiscation of illegal gains. Suspension or debarment from procurement also possible</p>	<p><u>Individuals</u>: Up to 10 years in prison and fines up to 1 million euros</p> <p><u>Entities</u>: Up to 5 million euros or 10x profit generated. Suspension or debarment from procurement also possible</p>	<p><u>Individuals</u>: Up to 5 years in prison</p> <p><u>Entities</u>: No corporate criminal liability; admin. Offense – breach of duty for failure to maintain a compliance system, fines up to 1 million euros. Loss of AEO status for export clearance also possible</p>	<p><u>Individuals</u>: Penalties depending on value of bribe, up to 14 years in prison</p> <p><u>Entities</u>: suspension of business activity, dissolution, debarment from procurement and fines; inclusion in national corruption database possible</p>	<p><u>Individuals</u>: Up to 10 years in prison</p> <p><u>Entities</u>: No cap on fines for corporations; possible debarment/exclusion from bids and tenders</p>	<p><u>Individuals</u>: Up to 5 years in prison and fines up to \$250,000 per violation or 2x the benefit from the bribery, plus restitution</p> <p><u>Entities</u>: Criminal fines up to \$2 million per violation or 2x the benefit from the bribery plus restitution and disgorgement. Suspension or debarment from gov't contracts and loss of import/export license also possible</p>

# Q&A