

# **ABC Company in Russia**

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**ABC Company Overview**

ABC Company (“ABC” or “the Company”) is a U.S.-based, publicly-traded, global consumer products manufacturer with significant growth in recent years. ABC has consistently demonstrated strong performance and has been recognized in the United States as a “Best Place to Work” on numerous occasions. The Company has focused recent expansion on emerging markets, experiencing success when its brand has elicited emotional connections with the consumer. ABC identified Russia as its next target, with launch and marketing blitz planned during the Sochi Winter Olympics.

**Russian Expansion Primer**

Successful launch into Russia is critical for ABC, as the dissolution of a separate business unit resulted in a revenue shortfall in the previous quarter. To ensure success in Russia, ABC plans to establish operations in the country at least twelve months prior to the Olympics. An advance team will look to rent approximately 20,000 square feet of office and production space. The group will require housing, which the Company hopes to build through a Russian contractor.

Expansion to Russia provides unique challenges for many multinational corporations. The country is vast and populations vary in size and composition throughout the nation. While Moscow resembles many other European cities, much of Russia is underdeveloped and relatively poor. The climate is also challenging, with seasonal regions such as Moscow and Saint Petersburg offset by wintery areas such as Siberia. The political environment, though improved in recent years, is rife with corruption and favoritism. Russia also has a well-documented history of human rights conflicts and abuses.

**Ethical Challenges in Russia**

Early in the process, ABC recognized two obstacles with its expansion plans: obtaining a lease to meet its needs and maintaining its inclusive corporate culture. In each situation, the Company encountered challenges which required critical review prior to proceeding.

*Leasing and Facilitation Payments*

It is crucial that ABC establishes an immediate local presence in the Russian market so the Company can develop the emotional connection its products require. ABC's localization plan has two elements: a facilities lease and temporary housing. ABC would prefer to contract one location for both.

Despite significant efforts, securing adequate real estate has proven difficult. One available property met Company requirements but was leased to a firm not vetted by ABC's external international counsel. Timing is critical, as several other companies have expressed interest.

In reviewing the potential deal, ABC's counsel noted two significant concerns, both fairly common in Russia. First, the local agent is willing to lease the property but has asked for "under the table" considerations, including a small cash payment and access to events at the upcoming Olympics. Second, the Russian government official managing the Company's construction permits has requested a small fee to complete required paperwork on ABC's timeline. Reaching agreement on this property is critical to meeting launch timelines, as no viable alternatives have been identified. ABC must carefully consider that although these considerations are minor with respect to the project, they may not be legal and could conflict with existing Company operational and/or ethical standards.

*Human Rights Considerations*

ABC Company, its executives, managers, and employees worldwide support workplace inclusion. The Company offers programs for different nationalities, religions, genders, generations, and sexual orientations, among others. ABC has been recognized in the U.S. as a "Best Place to Work" and among the first U.S. employers to offer domestic partner medical coverage, years before legally mandated.

Conversely in Russia, on November 19, 2013, *Human Rights Watch* (HRW) reported numerous instances of intimidation leading up to the Sochi Olympics. Vocal proponents of migrant workers, environmental and health impacts of construction, and eviction compensation have faced attacks, detention, and police searches. In addition, HRW reports law changes since President Putin's election have resulted in "restricting public assemblies, re-criminalizing libel, criminalizing religious insult, introducing additional restrictions on internet content, expanding the definition of treason, and banning 'propaganda' for 'nontraditional sexual relations.'"<sup>1</sup> In expanding to Russia, ABC must consider the impact of Russia's restrictive human rights policies on local operations.

### **ABC Company's Alternatives in Russia**

Expansion to Russia is an important strategic initiative for ABC's continued growth. To ensure optimal launch results, the Company must meet its timeline, which will require appropriately responding to the leasing and human rights concerns related to the project.

#### *Implications of Requests for Additional Considerations*

##### Operational, Legal, and Ethical Considerations of Extra Payments

ABC's first concern is dual requests for extra payments. Company officials must consider three elements: operational / financial, legal, and ethical.

First, the Company must consider whether the payments will negatively impact financial results to the degree that the expansion will not meet Company or analyst expectations. As payments are expected to be minimal, impact to the project should be negligible. However, ABC must also consider the precedent it would, as although the Company can "afford" these payments, it might prefer not to establish a practice

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<sup>1</sup> *Russia: Silencing Activists, Journalists ahead of Sochi Games*. (2013, November 2013). Retrieved from Human Rights Watch: <http://www.hrw.org/news/2013/08/06/russia-silencing-activists-journalists-ahead-sochi-games>

of providing compensation outside of contractual arrangements, as this could impact future costs and business models.

Next, there has been great debate in business and ethics related to the responsibilities of multinational corporations. Opinions differ between compliance with the law as the barometer and a greater responsibility in the community. In his essay entitled “Is Business Bluffing Ethical?” Albert Carr quotes an executive that “So long as a businessman complies with the laws of the land and avoids telling malicious lies, he’s ethical. ... If the law says he can do it, that’s all the justification he needs.”<sup>2</sup> Many ethicists argue for more, but the minimum is that businesses must comply with applicable laws.

Based on this, ABC must analyze relevant laws for its operations in Russia. A U.S. public entity, ABC is subject to the Foreign Corrupt Practices Act (FCPA), which “prohibits offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business.”<sup>3</sup> The FCPA requires willful intent to influence but favorable results are not necessary for prosecution. Additionally, the law includes a “books and records” provision that requires all payments, whether illicit or not, to be recorded in the registered company’s financial records. The regulation provides an exemption for “‘facilitating or expediting payments’ made in furtherance of routine governmental acts,” including “obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country.”<sup>4</sup>

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<sup>2</sup> Carr, A. (2005). Is Business Bluffing Ethical. In J. R. DesJardins, & J. J. McCall, *Contemporary Issues in Business Ethics* (pp. 243-250). Belmont, CA: Wadsworth., p. 246.

<sup>3</sup> Criminal Division of the U.S. Department of Justice and Enforcement Division of the U.S. Securities and Exchange Commission. (2012, November 14). *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. Retrieved from justice.gov: <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>, p.10.

<sup>4</sup> Ibid, p.25.

In addition to U.S. regulations, multinational corporations are subject to local laws and other international anti-bribery regulations. In Russia, although it may be “the way of doing business,” bribery is not legal. The UK Bribery Act of 2010 prohibits bribes to both private and public persons to entice favorable treatment. The Act is applicable to UK residents and companies, though bribery of foreign officials is punishable for all companies with operations in the UK. There is no facilitation exemption.<sup>5</sup> Upon reviewing the legal environment, ABC must classify the payments to determine potential options.

Beyond the operational / financial and legal implications, ABC must understand the ethical ramifications of complying with the payment requests. Though speaking specifically about sustainable business, Joseph DesJardins suggests that a business’ responsibilities do not end with legal compliance, consumer satisfaction, and profit maximization. Businesses must be concerned with its impact on current society and future generations.<sup>6</sup>

The Right Honourable Kenneth Clarke MP, QC, former UK Secretary of State for Justice, details the impact of bribery: “Bribery blights lives. Its immediate victims include firms that lose out unfairly. The wider victims are government and society, undermined by a weakened rule of law and damaged social and economic development. At stake is the principle of free and fair competition...”<sup>7</sup>

This Utilitarian, free market argument acknowledges the potential for unjust enrichment of a minority of corporations at the expense of others who cannot afford extra payments or do not have access to influential officials. These actions could negatively impact a large mix of stakeholders: from reduced rivals’ earnings to misaligned governmental policies / programs to higher costs for consumers. As a

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<sup>5</sup> Ministry of Justice. (2011, March). *The Bribery Act of 2010 - Guidance*. Retrieved from Gov.uk: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181762/bribery-act-2010-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf)

<sup>6</sup> DesJardins, J. R. (2005). Sustainable Business: Environmental Responsibilities and Business Opportunities. In J. R. DesJardins, & J. J. McCall, *Contemporary Issues in Business Ethics* (pp. 409-416). Belmont, CA: Wadsworth.

<sup>7</sup> “The Bribery Act of 2010 – Guidance.” p.2.

result, Utilitarianism suggests that the Common Good is not served when multinational corporations provide bribes to obtain preferential treatment.

Though valuable, Utilitarian ethical interpretations fall short in many situations in reaching an absolute moral imperative, as judgments are required to determine the net impact of each action. On the other hand, Rights Theory focuses on the innate autonomy of individuals and the respect that everyone deserves. Out of this respect, people have inalienable rights of life, biological survival, bodily protection, opinion, association, and to collectively determine a social system. By offering bribes, corporations circumvent the natural order of business that can support these rights. For example, if ABC obtains building permits through a bribe, the Company might have excluded other companies from the same permits, reducing their earnings potential. If ABC builds without appropriate permits (or receives permits without merit), they could cut corners with regards to safety and working conditions, potentially endangering workers' rights to bodily protection and even life.

The Right Honourable Kenneth Clarke MP, QC adds that “Bribery undermines democracy and the rule of law and poses very serious threats to sustained economic progress in developing and emerging economies.”<sup>8</sup> Though it has a significant and growing presence, Russia is very much a developing nation on the world stage. Clarke’s suggestion is rooted in free market economics, but it applies to Rights Theory as well: in undermining the rule of law and threatening economic progress, bribery has the potential to pull at core rights of every member of the community.

#### ABC’s Response to Demands for Extra Considerations

Prior to finalizing its leasing and construction decisions in Russia, ABC must critically analyze the requests for extra considerations. There are essentially three requests: cash payments to both individuals

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<sup>8</sup> “The Bribery Act of 2010 – Guidance.” p.8.

and corporate access to Olympic events for the lessor. Each request has different implications and potential solutions.

The cash payment to the lessor most closely resembles a bribe, as it would be a side agreement with compensation directly to the lessor. Although the FCPA does not apply to private individuals and the UK Bribery Act only applies to payments to private citizens occurring in the UK or by UK-incorporated companies, cash payments outside of contractual arrangements are not recommended. In the three aspects reviewed earlier – operational / financial, legal, and ethical – these contributions should be avoided.

Though financial ramifications are minimal, these extra considerations set an operational precedent that ABC is willing to offer additional compensation to close a deal. Legally, ABC can make this payment, though it must record it as an operating expense in its financial records to avoid financial records penalties. The ethical perspective is most complicated: on the surface, few parties are directly affected. However, ABC must consider the societal impact of a large company offering extra considerations simply because it can afford to. Does this unfair advantage threaten economic progress and fair competition, as Clarke suggested? Does this payment perpetuate business practices that pick at the core of innate human rights to subsistence? Does the lessor receive unjust personal enrichment simply because of his position?

Based on the foregoing, ABC has several options related to the lessor's request for cash payment. Since the request is minimal and satisfies all legal requirements, the Company could make the payment to lessor without any significant ramifications. However, this will set a negative precedent and could cause employees and other stakeholders to question ABC's ethical compass. Conversely, ABC could refuse to make the payment on ethical grounds, potentially costing the Company the facility, delaying expansion plans, and causing financial harm.

Between these two alternatives is ABC's best course of action: work with the lessor *company* (not agent) to recognize the cash payment as a real estate finding fee and process payment to the lessor *company* as a normal cost of doing business. Finding fees are not unusual for leasing arrangements, so no precedent would be set. There are no legal concerns, as this would be a normal business expense, paid directly to the leasing company and recorded in ABC's financial records. The ethical lines are still blurred with this solution, as ABC is using its financial resources to obtain preferential treatment in the negotiations. However, by paying the fee directly the leasing company, ABC removes the unjust enrichment element of the payment.

The lessor's second request – corporate access to Olympic events – elicits a simpler analysis. Financially, setting up a hospitality tent at select events would not be significant to ABC's Russian operations.

Legally, the FCPA and UK Bribery Act specifically allow promotional hospitality. Ethically, offering beneficial access to a specific vendor could be concerning. Under Rights Theory, offering access to win a bid could be considered providing unjust enrichment and leveraging ABC's resources to upset the natural balance of the economy (see Clarke above). To avoid these implications, ABC could setup a hospitality tent at various Olympic events and invite all of its Russian vendors. Broad access would remove the ethical gray area related to extra benefits and open access to all companies working with ABC.

Finally, ABC must determine its best option related to the government official's request. Financially insignificant, ABC would have to consider the impact of making this payment on future activities. Strictly speaking, this payment is a facilitation payment, except under the FCPA but not the UK Bribery Act. Since ABC has operations in the UK, the Company would potentially be subject to sanctions, though the Act acknowledges that the elimination of facilitation payments is an international concern prosecuted

only if conviction is certain and efforts are in the public interest.<sup>9</sup> Ethically, ABC must balance the cost of doing business against the unjust enrichment argument discussed earlier.

In this instance, ABC has two choices: pay the official or resist the request. Refusing to pay could delay building permits, potentially causing the Company irreparable financial harm by not meeting launch goals. Paying the cash will set a precedent, conflict with UK laws, and raise unjust enrichment concerns. If the Company expects the payment to be minimal and limited in occurrence, making the facilitation payment would be its best course of action so that it can meet its launch timeline.

### *Impact of Human Rights Policies*

#### Operational, Legal, and Ethical Considerations of Human Rights Policies

Recent legal activity in Russia “prohibiting the promotion of nontraditional sexual relationships”<sup>10</sup> is just one example of the juxtaposition between ABC and Russia’s disparate histories. Prior to launch in Russia, ABC must analyze the operational, legal, and ethical considerations of this dichotomy.

Operationally, since ABC plans to start Russian operations with U.S. expatriates as an advance team, it is critical for success that the Company supports employee policies consistent with home country standards. Without offering similar support, policies, and benefits, ABC risks incomplete commitment to the plan, potentially resulting in a negative impact on financial results.

Ethically, relativist theories suggest that standards and policies should vary by region. However, if the employees are from the U.S. but working in Russia, which country sets the rules? Additionally, relativist

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<sup>9</sup> “The Bribery Act of 2010 – Guidance.” pp. 18-19.

<sup>10</sup> Lally, K. (2013, September 29). *Russia anti-gay law casts a shadow over Sochi’s 2014 Olympics*. Retrieved from The Washington Post: [http://articles.washingtonpost.com/2013-09-29/world/42510859\\_1\\_sochi-russia-anti-gay-law-olympic-boycott](http://articles.washingtonpost.com/2013-09-29/world/42510859_1_sochi-russia-anti-gay-law-olympic-boycott)

ethics is inadequate because Rights Theory proposes certain innate, inalienable rights for all individuals. ABC must consider the potential impact of offering policies in Russia that do not meet U.S. standards.

ABC's most difficult analysis is of the legal implications related to HR policies. Russian law does not allow "propaganda" or outward presentations of nontraditional sexual preferences. ABC has been recognized in the U.S. for its policies of inclusion and generous health benefits. If outward displays are the only prohibited activities, then ABC can continue to offer its customary policies to its Russian employees, modifying only its outward acknowledgment of these programs. However, if Russian law prohibits offering these policies, ABC must consider alternatives.

#### ABC's Response to the Russian Human Rights Environment

ABC's response to the Russian human rights environment has one critical decision factor: does Russian law's prohibition of outward displays of alternative lifestyles extend towards corporate financial support? If corporate policies of inclusion are allowed, then ABC can offer similar policies in Russia, but request that local employees comply with Russian laws by refraining from outward communications. To offset this restriction, the Company could offer its Russian employees compensating benefits. Operationally / financially, ABC must analyze the trade-off between higher costs and the potential negative impact on financial results. Ethically, ABC must strive to meet its home country policies because it "is the right thing to do" and Rights Theory acknowledges that all people have the same innate rights. Thus, if legally permissible, offering different benefits does not align with this theory.

However, if Russian law prohibits offering policies consistent with home country ABC, the Company has two choices: offer extra pay or benefits to compensate employees for the reduction in support or send different, unaffected employees. Unfortunately, both options would likely impact worker productivity and financial results of Russian operations.

**Conclusion – ABC’s Decisions for Russia**

ABC Company is a growing, U.S. publicly-traded multinational corporation with plans to expand into Russia prior to the 2014 Winter Olympics. In its initial activities, ABC encountered several situations that must be addressed prior to establishing Russian operations. First, ABC needs to determine if it can legally extend its corporate policies of inclusion to Russia. Second, ABC must determine how to proceed with several requests for extra considerations outside of contractual lease obligations. If the Company can extend its home country HR policies, structure its payment to the lessor company as a contractual finding fee, offer vendor invitations to an Olympic hospitality tent, and pay a small, one-time facilitation payment to the government clerk processing permit paperwork, ABC will have balanced its operational / financial, legal, and ethical responsibilities and be setup for success in Russia.