

FOREIGN CORRUPT PRACTICES ACT (“FCPA”)

WHAT IS THE FCPA?

The Foreign Corrupt Practices Act (“FCPA”) prohibits entities or individuals to corruptly make an offer, promise, or payment of “anything of value” to a “foreign official” for the purpose of “influencing” any act or decision to obtain, retain or direct business. The two provisions under the act are Anti-Bribery (as defined above) and Books & Records, which require corporations covered by the provisions to [a] make and keep books and records that accurately and fairly reflect the transactions of the corporation; and [b] devise and maintain an adequate system of internal accounting controls.

FCPA SERVICES

- FCPA Investigations
- Anti-Corruption Compliance Services
- Corruption/Fraud Risk Assessments (SOX Requirement)
- FCPA Due Diligence on Third Parties/Employees
- Asset Tracing
- Anti-Money Laundering
- Scenario Based Anti-Corruption Training

CLIENTS POTENTIALLY IN NEED OF FCPA SERVICES

- Companies with international offices or that export products/provide services in international locations
- Entities that interact with foreign governments on a regular basis
- M&A clients with international targets in high-risk countries
- Buyers acquiring a company with international targets
- Outside counsel with the same clients listed above
- Multinationals that do not have updated FCPA policies and procedures

B. RILEY RESOURCES

- We have global representation through our affiliation with BTG Global Advisory (BTG GA) with relationships in Asia, Latin America, Europe, and Africa
- Our team is comprised of multi-lingual, experienced investigators/forensic accountants, including former FBI Special Agents

POTENTIAL CLIENT CONTACTS

- C-Level Executives
- Board of Directors
- General Counsel
- Internal Audit Directors
- White Collar Attorneys
- Corporate Governance Attorneys
- International Trade Attorneys
- Compliance Officers
- Investor in International M&A Activities
- Corporate Security Officers

FCPA FAQs

WHO IS COVERED UNDER THE FCPA?

The FCPA covers:

- Domestic concerns – employees/entities that are located in the United States
- Publicly held entities (issuers), which are the business entities (foreign or domestic) that are traded on US stock exchanges or required to file reports with the SEC
- Foreign employees of US domestic concerns or publicly traded entities
- Dealers, independent sales representatives, and third party brokers of domestic concerns or publicly traded entities

WHAT DOES “CORRUPTLY” REFER TO?

Corruptly refers to the intent of the party offering anything of value. This term is more for attorneys to argue in court. If your client is in the situation of struggling with the definition of “corruptly”, then preventative and compliance measures have already failed. It is better to have a robust anti-corruption compliance program in place before the definition of corrupt intent is required.

WHAT IS ANYTHING OF VALUE?

FCPA enforcement actions have been based on the following “things of value” provided directly or indirectly to a “foreign official”:

- Gifts, such as cash, cars, jewelry, etc.
- Excessive travel and entertainment expenses
- Educational or executive training expenses
- Promises of future employment
- Shares or dividends of a company
- Credit card payments
- Paying off loans

WHAT IS A FOREIGN OFFICIAL?

The FCPA defines “foreign official,” as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for, or on behalf of, any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.” “Foreign official” includes family or anyone acting for the foreign official. This can include customs officials, tax collection agents, and doctors working on behalf of the government under social security programs.

ARE PAYMENTS TO FOREIGN OFFICIALS TYPICALLY IN CASH?

Although we have seen direct payments, typically payments are made indirectly in methods such as:

- Loans to relatives of foreign government officials
- Credit card payments
- Employment of relatives
- Vacations or excursions during an “office visit”
- Club memberships

WHAT ARE THE PENALTIES AND FINES ASSOCIATED WITH VIOLATIONS OF THE FCPA?

ANTI-BRIBERY

	Civil	Criminal
Corporate	\$16,000	\$2 Million
Individuals	\$16,000	\$250,000
Imprisonment		6 years max. [per count]

ACCOUNTING

	Civil	Criminal
Corporate	\$725,000	\$25 Million
Individuals	\$150,000	\$5 Million
Imprisonment		20 years max. (per count)

The fines/penalties above are misleadingly small as they are per incident/transaction, do not include disgorgement of profits, and do not include investigation and legal fees.

WHY SHOULD INTERNATIONAL ENTITIES HAVE CONCERN FOR POTENTIAL FCPA VIOLATIONS?

- FCPA investigations and enforcement actions by the DOJ and SEC have increased tremendously in the last 15 years
- Average length of an investigation has increased, which increases investigation costs and bad publicity, while also decreasing stakeholder confidence
 - Average length of an investigation in 2003: 1.4 years
 - Average length of an investigation in 2013: 7.3 years
- U.S. parent companies can be held liable for the acts of foreign subsidiaries even if they are unaware of the violations
- Buyers can inherit an entity’s current and past FCPA issues in M&A transactions
- Corporate executives can be criminally charged for violations and can include incarceration
- Increased scrutiny of “foreign” government partners, particularly in “high” corruption risk countries
- Other countries such as Mexico, Brazil and France are adopting anti-corruption legislation and coordinating investigations globally