
COMPLIANCE EDUCATION AND TRAINING

FOREIGN CORRUPT PRACTICES ACT
(FCPA)

Lockheed Martin Corporation

Revised 10/6/2000

INTRODUCTION by Vance Coffman

Corruption has been called an epidemic affecting every region of the world, regardless of cultural background, level of development or gross national product. Corruption stories make front-page news in countries in Europe, Asia, Africa, the Middle East and South America, as well as in the United States.

Sadly enough, bribery often seems to work. United States intelligence sources estimate that companies offering bribes win roughly eighty percent of the foreign contracts those companies are seeking.

So what's wrong with this picture? Bribery by corporations is bad business. The free market system depends on fair competition based on quality, service and price. And bribery by our foreign competition affects the ability of U.S. companies to do business overseas.

Last but not least, our GOVERNMENT- through the Foreign Corrupt Practices Act – and our CORPORATION -- through our Code of Ethics -- forbid corrupt payments to foreign government officials. FCPA violations can result in severe civil and criminal penalties, both for the individual and for our corporation, and a violation of our Code of Ethics may result in severe disciplinary action.

We are serious about overseas business. We want to win in the global marketplace. But we will only win according to the law and ethical business conduct. We will walk away from any deal or lose any contract rather than violate the FCPA. We simply cannot tolerate any violations.

I urge you to pay careful attention to the following program, to be sensitive to the FCPA's requirements and to know and follow Lockheed Martin's FCPA compliance policy. □

In today's global marketplace, international business activities are becoming increasingly common and important. As a result, the senior corporate executives want to make sure that their personnel understand these key points about the FCPA.

They believe it is critical that their personnel understand the full scope of the Foreign Corrupt Practices Act.

They want their personnel to be able to recognize potential FCPA violations; to be aware of the U.S. government's vigorous enforcement of the FCPA; to understand the severity of the personal and corporate consequences associated with violating the FCPA; and to understand how to address FCPA questions and issues.

Can you identify any potential FCPA violations in this situation?

We're here in Pollo del Marre where Acme Manufacturing, a major player in the commercial airline industry, is trying to sell five narrow body jets to a commercial airline owned by the local government and reporting to the Minister of Defense.

We've captured a conversation between the regional sales manager for Acme and this foreign sales consultant, a man whose services Acme has used for years.

CONSULTANT: Now, let's talk about our agreement.

SALES MANAGER: Our sales consulting agreement? I, uh...I know it expires in a couple of months, but we'd like to extend it for another year if that's what you're concerned about. I'm hoping for a decision from the airline in three or four months.

CONSULTANT: Well of course we will want to renew it for another year. We are too close to stop now. But there is another matter -- my fee. As you know, we have been spending an extraordinary amount of time on this competition and I agreed to the existing fee because I thought the process would only last a few months, but now it has gone on for nearly a year. And, as you said, it might take the airline another three or four months until they make a decision. I think, uh, increasing my commission to five percent would be fair... and it would still be a modest fee for my services.

SALES MANAGER: It's a pretty steep increase. It would bring your commission to nearly nine million dollars. I don't know if I can convince our management to go that high, but I'll see what can be done. I'm not promising anything.

CONSULTANT: Well, I don't know if I could continue as your consultant for any less. There is a lot of work to do to bring the customer around to our way of thinking. And I believe they're currently leaning toward the competitor's aircraft, even though they like your airplanes better for their route structure.

SALES MANAGER: Yeah, well I certainly don't want another loss. Last year's wide body competition was bad enough. We simply can't afford to lose to them on narrow bodies as well. They'll be entrenched with the airline and we won't have another sale to them this century! I'll do what I can.

CONSULTANT: Well, can I expect to hear from you soon?

SALES MANAGER: I'll get back to you next week and let you know how it's going.

CONSULTANT: Well thank you, I look forward to your call.

SALES MANAGER: Thank you.

CONSULTANT: Thank you.

SALES MANAGER: Mary, will you please get me Bill in Legal?

(PAUSE)

Hi, Bill. I need to talk to you about our sales consultant over here. (PAUSE) Yeah, that's the guy. Our agreement is up for renewal in a couple of months and he wants a big fee increase. He's got us over a barrel. The airline will probably make a decision in three or four months.

(PAUSE) Didn't you guys do a due diligence at his last renewal? (PAUSE)

Look he's not going to bribe anyone. I've known him for five years, he's a real straight arrow, a real boy scout. Besides, I told him I'd get back to him next week. He'll be insulted if we start asking a whole lot of questions. He's insisting on the increase. I don't know what he'll do if we turn him down. (PAUSE)

We don't have time for another careful review. Aren't there FCPA provisions in our agreement to protect us? Isn't that enough? (PAUSE)

Look, Bill, if I sound panicked, it's because I am. My job is hanging in the balance here, and you're not helping any. The more I think of it, this is a business decision, pure and simple.

Would you recommend the increased commission to your management when the consulting agreement is renewed?

TOM: The request for an increase late in the campaign could be the result of demands for payoffs by airline or government officials. Another consideration is the fact that your company lost a prior sales campaign in this country to a manufacturer that is not bound by the same rules that your company must live by.

The request for an increase might also be just an attempt by the consultant to leverage the situation to obtain more compensation for himself.

On the other hand, the request for the increase might turn out to be justified, given the number of years that the consultant has served your company and the increased level of service the consultant will be providing your company.

The request for an increase needs more study before a decision is made and may require further in-country due diligence.

The review might include the following:

Looking at the increased commission rate to see if it is still within a reasonable range -- check with sources in the country such as accounting firms, law firms or the U.S. Embassy;

looking into whether bribery is commonplace in the particular country -- again, check with the same in-country sources;

checking into whether the competition is likely making payments to officials;

looking at the prior competition to investigate the role of bribery in the final decision;

and looking in the consultant's file to see if there is anything that might lead you to believe that a bribe is likely.

The company does not need to be convinced that a bribe is not possible, only that a bribe is not substantially likely to occur.

LANDRUM: Yes, these are tricky issues. To learn more about the FCPA, I suggest you begin with "Understanding the FCPA."

UNDERSTANDING THE FCPA

To understand the scope of the Foreign Corrupt Practices Act, you should know the history of the FCPA, understand the law itself, learn about the "red flags" that may warn you about possible violations of the law and understand your company's own FCPA policies and procedures.

In the mid-1970s, the Watergate scandal rocked the United States. Part of the fallout of Watergate was a special prosecutor's report revealing the existence of political slush funds maintained by a number of U.S. corporations.

Frequently, these funds were sources for bribes to foreign officials, most often for the purpose of obtaining foreign business for U.S. companies.

In an unrelated investigation, the Securities and Exchange Commission, the S-E-C, found that over four hundred U.S. companies had previously made questionable payments to foreign politicians, officials and political parties.

Most of us know that bribery gives an unfair advantage to the side making the bribe. And bribery by corporations is bad business. It's basic in the free market system that the sale of products be made on the basis of competition based on factors such as quality, service and price. Corporate bribery robs us of these values. And foreign corporate bribery by any American company may affect the ability of other U.S. companies to do business overseas. Corporate bribery is no substitute for honest competition.

Also, keep in mind that while the U.S. FCPA is unique in prohibiting bribery of foreign officials, most countries prohibit bribery of their own officials by anyone, including foreign companies. As a result, an act that violates the FCPA most likely also violates the laws of the country in which the bribe is made.

As an outgrowth of the special prosecutor's report and the SEC's findings, the Foreign Corrupt Practices Act became law in 1977 under President Jimmy Carter. The law prohibits the bribery of foreign government officials, gives enforcement responsibilities to the SEC and the Department of Justice and establishes a set of accounting rules for companies to follow.

In 1988 the Act was amended to clarify its scope. It is this amended FCPA that is enforced today.

It's important to realize that the FCPA is vigorously enforced by the Department of Justice, illustrated by the fact that the Department has initiated scores of investigations in recent years. And the law is strict, with

severe punishment for violations. For example, indictment alone can lead to suspension of export privileges. To protect yourself and your company while doing business overseas, you must be fully aware of the law and its provisions.

The Foreign Corrupt Practices Act is a complex statute. In this section, we are going to summarize the law for you, boiling it down to its essential elements and clarifying some of the statute's language. As you read the law, remember that the FCPA's important anti-bribery provisions prohibit both direct and indirect -- that is, through third parties such as agents -- payment of money or anything of value, or promises or authorizations of payment of money or anything of value to government officials for the purpose of obtaining or retaining business.

You'll learn more about this in other sections of this special report, but keep in mind that making payments to someone when there is a high probability that the payments will be used to bribe a government official is just as bad as bribing the official directly, and will be treated by the authorities in the same manner.

Prohibition of Direct Payments or Promises to Pay

The FCPA bribery provisions provide that our company and its officers, directors, employees, stockholders or agents acting on their behalf are prohibited from offering, paying, giving, promising to pay or give or authorizing the payment or gift of money or anything of value to any foreign official or any foreign political party, official or candidate in order to obtain or retain business for any person.

Prohibition of Indirect Payments or Promises to Pay

The FCPA bribery provisions provide that our company and its officers, directors, employees, stockholders or agents acting on their behalf are prohibited from offering, paying, giving, promising to pay or give or authorizing the payment or gift of money or anything of value 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, to a foreign official, in order to obtain or retain business for any person.

The FCPA provides a very narrow exception for "grease" or "facilitating" payments which are made for the purpose of expediting or securing the performance of a "routine governmental action." This exclusion does not apply to actions that involve the exercise of any official discretion. In other words, these payments are appropriate to ensure the receipt of services or benefits that the company is entitled to receive.

The FCPA also contains an affirmative defense to prosecution under which a company may be able to make reasonable and bona fide expenditures relative to the promotion of its products or the performance of its contracts.

In addition, if prosecuted, a company would be able to establish an affirmative defense under the FCPA if the payments were lawful under the written laws of the country. This defense, however, is of little value since no foreign country is known to officially condone bribery. Remember that custom and practice (i.e., "That's the way they do business here") do not constitute written law.

Always consult with your legal department before attempting to rely on the "grease" payment exception or either of the FCPA's affirmative defenses. As a matter of policy, many U.S. companies prohibit "grease"

payments by their employees.

Severe sanctions for violating the FCPA are provided for both companies and individuals.

For companies, violation of the anti-bribery provisions of the FCPA can result in the imposition of criminal and civil penalties, the debarment and suspension of the company from U.S. government contracts, and the loss of other benefits, including export privileges.

For employees, violation of the anti-bribery provisions of the FCPA can result in the imposition of criminal and civil penalties, including imprisonment. Additionally, any fine imposed on individuals under the FCPA may NOT be paid or reimbursed, directly or indirectly, by the company.

"Reasonable assurances" and "reasonable detail" are defined to mean such a level as would satisfy prudent officials in the conduct of their own affairs.

Select "Continue" to go on.

An "agent" is considered to be any person or entity which represents or acts on behalf of the company.

Foreign agents are defined as foreign companies or individuals that represent or act on behalf of the company in the foreign country. Foreign agents can be agents -- as that term may be used under local law -- representatives, consultants, independent contractors or advisors.

This status can exist whether or not there is a written agency or representation agreement in place.

A promise to pay consists of the promisor's manifestation of his or her intention to make a payment and the promisee's justifiable understanding that a commitment to pay has been made.

It's not important whether the company, the employee or the agent has the ability or the authority to make the payment or to cause the payment to be made or whether the payment is eventually made.

The term "anything of value" means any item that confers a benefit, whether direct or indirect, on the government official, and could include, in addition to cash payments, items such as an interest in a joint venture or other enterprise, a future job offer, a political contribution, a payment for a child's schooling, a gift of a luxury watch or a trip to Disney World.

Any payment, gift or benefit, no matter how small, falls within the definition.

The recipient of the thing of value offered, given or promised need not be a foreign official, foreign political party or candidate, but could be any person who could act as a conduit to a foreign official, foreign political party or candidate. This can include, among others, consultants, representatives, independent contractors, agents and advisors.

In addition, the foreign official does not need to be the direct recipient of the payment or promise of payment if he otherwise benefits from the same.

The definition of knowledge for the purposes of the FCPA includes actual knowledge. However, knowledge

will also exist with respect to circumstances, conduct or results, if there is an awareness that the conduct is occurring, if the circumstance exists or the result is substantially certain to occur or if there is a firm belief that such circumstances exist or that the result is substantially likely to occur.

"Knowledge" also includes conscious disregard, willful blindness, deliberate ignorance -- or "head in the sand" mentality -- unwarranted obliviousness to red flags that should alert one to the high probability of a violation of the FCPA and instances in which a reasonable person would have realized the existence of circumstances pointing to a high probability of a violation, but failed to investigate the circumstances.

Any officer or employee of a foreign government, agency or instrumentality -- such as a foreign government-owned company-- or any person acting in an official capacity on behalf of such government, agency or instrumentality is considered a foreign official under the FCPA. The term also includes individuals who have functional authority as officials but are not actually employed by the foreign government. For instance, the term can include consultants and special advisors to foreign governments or foreign government officials.

It may include individuals holding honorary government positions with only ceremonial duties but no substantive decision making responsibilities, as well as educators working for state universities.

Under the statute, a company may pay "facilitating" or "grease" payments to a government official if the purpose of the payments is to expedite or secure the performance of a "routine governmental action." Routine governmental actions are those actions "ordinarily and commonly" performed by a foreign official, including obtaining permits, licenses or other official documents to qualify a person to do business in a foreign country; processing visas; providing police protection; providing mail pick-up and delivery; scheduling inspections associated with contract performance or inspections related to transit of goods across country; providing phone service, power and water supply; loading and unloading cargo; protecting perishable products or commodities from deterioration; or performing any actions of a similar nature.

As this list suggests, these are all benefits that the payor should be entitled to receive in any event.

However, if the government actions in question involve the exercise of any official discretion, any payments would not likely fit within the exception.

Remember, payments to violate or ignore local laws do not fall within this exception. Such payments are not for the performance of a "routine governmental action."

Again, remember that many companies prohibit "grease" payments or require that the Legal Department approve such payments.

Reasonable and bona fide expenses are expenses such as travel and lodging, incurred by or on behalf of a foreign government official in connection with the promotion, demonstration or explanation of products or services, or else with the execution or performance of contracts with a foreign government or agency thereof. In order for the "reasonable and bona fide expenditure" affirmative defense to be applicable, payments must be BOTH reasonable and bona fide. If a payment is reasonable but made with a corrupt

intent, the payment is not bona fide and, therefore, the affirmative defense will not be available.

A company may be fined up to two million dollars per violation. Furthermore, in accordance with the Sentencing Reform Act, such fines may be increased to an amount not to exceed twice the pecuniary gain derived by the defendant from the related transaction or twice the pecuniary loss a third person has suffered due to the offense. And, if the U.S. government decides to prosecute under the FCPA, additional charges may also be levied on the basis of the same acts, including offenses such as mail fraud, wire fraud, conspiracy and false claims. The facts that support an FCPA case may also support these additional charges.

U.S. companies, their officers, directors, employees and agents, also are subject to civil penalties under the FCPA of up to \$10,000 for each violation. Such civil penalties may be increased substantially in the event of particularly serious violations.

If the company or an employee or agent of the company is convicted of violating the FCPA, the company and the employee may be barred from doing business with the U.S. federal government. The mere fact that the company has been indicted for alleged violations of the FCPA could also be adequate grounds for the company's and the employee's suspension from federal government contracting.

A willful violation of the anti-bribery provisions of the FCPA will subject officers, directors, shareholders acting on behalf of the company and employees or agents of the company to a fine of up to \$100,000 and/or a sentence of up to 5 years in federal prison.

Under the Sentencing Reform Act, the fine may be increased to the greater of \$250,000 or an amount not to exceed twice the pecuniary gain derived from the offense by the defendant or twice the pecuniary loss a third person has suffered due to the offense.

The officers, directors, employees and agents of a U.S. company may be fined up to \$10,000 for each violation of the anti-bribery provisions.

Any fine imposed on individuals under the FCPA may not be paid or reimbursed, directly or indirectly, by the company.

It's very important to remember that employees can be prosecuted even though their company is not.

The FCPA's prohibition on corrupt payments does not apply solely to a sale situation. The broad language encompasses procurement and industrial participation or offset transactions, as well as matters related to the performance and carrying out of existing business, such as obtaining favorable tax treatment.

How to avoid trouble under the FCPA?

The fact is that most FCPA prosecutions are brought some time after the events in question took place. This means that hindsight plays an important part for both the prosecution and the defense.

Once it's shown that a bribe has been paid, it can be very hard, in hindsight, to demonstrate a lack of

corrupt intent on the part of the payor.

If the government can point back and establish a corrupt intent by saying "at that time, you should have known that there was a high probability that a bribe would be paid" -- that is, there was a "red flag" you ignored or did not investigate -- and if you can't establish a lack of such intent, then you're in trouble.

So even if you say you didn't intend to bribe anybody, that isn't a defense. If the prosecution can show that you were aware of a high probability that a bribe was being paid, you can be found in violation of the FCPA.

So what's to be done? How do you protect yourself?

Keep your eyes open. Watch for the so-called "red flags" that signal potential trouble. And carefully follow your company's compliance program to show that you did everything you could to make sure no bribery was taking place.

Always remember that not all business is good business.

Your answers to the following questions will check your understanding of some FCPA Law topics.

The regional sales manager for an international company has been asked to pay \$50 per day for police protection for his new plant in a foreign country. Can the sales manager make this payment without risking a possible FCPA violation?

Although police protection is a service routinely provided and a "grease" or "facilitating" payment made to assure this service might not violate the FCPA, you must first consult with the Legal Department before making any such payment. Because this is a very narrowly interpreted defense, the larger the payment involved, the less likely this defense will be available.

You and your company were both found in violation of the FCPA and fined. You go to your Legal Department and ask when your company will pay the fine levied against you. What does legal counsel say?
The statute prohibits payment or reimbursement of fines or levies against individuals by their employers.

You make an offhanded and half-joking promise to the brother-in-law of a foreign minister that you will "get him a trip to Las Vegas" at your company's expense if he helps you pull off a particular part of a deal. Are you in danger of violating the FCPA?

This may violate the FCPA because even a promise of payment is illegal under the statute.

You give a foreign cabinet minister's wife a gold watch for her birthday. The cabinet minister is in a position to influence whether or not your company sells several commercial aircraft to the local airline. Do you risk violating the FCPA?

The gift may be viewed as an attempt to gain favor with the minister and therefore it may be considered an FCPA violation. A gold watch most likely would not be viewed as a token gift, particularly when made to the spouse of a government official.

To help sort out the law and understand the critical importance of "red flags" in warning you of possible FCPA violations, let's start with a **quick overview of the law**.

The FCPA makes it unlawful to make a payment to a foreign official or to any person while knowing that all

or a portion of that payment will be offered, given or promised to a foreign official -- or any foreign political party or official or candidate -- for the purpose of influencing any act or decision in order to assist a company in obtaining or retaining business.

The standard of "knowing" goes beyond actual knowledge and includes conscious disregard, deliberate ignorance -- also referred to as the "head in the sand" attitude -- and obliviousness to "red flags" that should alert a reasonable person to a high probability of a violation.

Good business practice requires that a reasonable amount of investigation, or due diligence, be done prior to engaging the services of a foreign sales representative, consultant or agent who's going to help you make a deal in a foreign country. In fact, you should conduct due diligence in most international business transactions.

The due diligence process, if properly conducted, supports that you have acted in good faith and checked things out thoroughly, especially if there are any "red flags" present.

RED FLAGS

Due diligence is the term used for the background investigation that a U.S company performs on potential service contractors and any other participants in an international business transaction. Due diligence confirms that the individual or company you're dealing with is reputable, is capable of performing the job for which it has been hired, has been selected for valid business reasons, understands the FCPA and is capable of doing business without making payments in violation of the FCPA. Another significant objective of due diligence is to address and resolve any "red flags" that may have been identified.

Due diligence procedures typically involve multiple activities, including having the proposed service contractor complete an application form and a conflict of interest questionnaire and sign an FCPA certification. In many cases, due diligence may require an in-country validation which generally will include visiting the proposed consultant or service contractor's office, interviewing the proposed consultant or service contractor and any principal or employee who will play a major role in the relationship, checking with the U.S. Commercial Attaché at the local U.S. Embassy, local accounting firms, local banks and local U.S. business people and obtaining the input of a local law firm.

It's important to realize that while different companies may have different due diligence procedures, the differences are in how the process is done and who in the company does it. What the procedures are intended to do in terms of checking out people and situations is pretty much the same. Back to you, Steve.

Now, let's take a closer look at the common "red flags."

The presence of any of these "red flags" may indicate an increased potential for improper payments. Remember that "red flags" are not an absolute bar from going through with a transaction but they must be investigated and resolved before proceeding. Such investigations are particularly prudent given that judgments as to "knowledge" of an improper payment invariably will be made after the fact and with the benefit of perfect hindsight.

In the definitions, the term Consultant, with a capital C, is used to mean any foreign sales representative, agent or consultant engaged to assist the company in a foreign country.

Unusually large commission, retainer or other fee

If a request is made for a commission or other payment that is significantly greater than that historically paid by the company for similar products or services, including but not limited to payments in the same territory or by other parties in the market in question for similar products or services, this should alert the employee that there is the potential that the Consultant might be using the excess funds to make improper payments. The employee should inquire as to the Consultant's reasons for requesting the excessive commission and if the payment is not adequately justified, the excessive commission, retainer or fee should not be paid.

Further, if the Consultant requests that any payments be made outside the established business arrangement, this also should alert the employee that the Consultant may be using the extra funds to make improper payments. Once a business arrangement has been agreed upon, any request for payments in excess of or beyond that should be seen as a "red flag," particularly if the request is late in the selection process. The employee should inquire as to the justification for the additional payment and if the additional payment cannot be justified (due to an increased scope of work, etc.), the payment should not be made.

Reputation and integrity of the representative is in question

A Consultant or other intermediary has a reputation for shady or dishonest dealings, or for "getting things done" in a way that invites suspicion.

Negative information is developed as part of due diligence

Negative information regarding a Consultant, other intermediary or a transaction is developed as part of a due diligence process.

The country in question is deemed high risk due to the fact that bribery is prevalent or believed to be commonplace.

Representative refuses to make FCPA-related certifications

If the Consultant refuses to make company-required FCPA certifications, including certifications that it is aware of the FCPA, understands the FCPA, has and will continue to operate its business in compliance with the FCPA, and that no improper payments have been made or promised in connection with the subject transaction, this should alert the employee to the possibility that the Consultant may not be operating in compliance with the FCPA.

Unusual method of payment proposed by representative

If an unusual proposal is made concerning a method of payment, particularly one involving third parties or countries (i.e., not the one in which the services are being rendered), or for payment in cash rather than by check or wire transfer (particularly to an account or bank located in a country known for its bank secrecy laws), or for payment to a numbered account, there is potential that improper payments are being made.

Family or business relationship to a government official

In the event that the Consultant is related to a government official, is employed by or employs a government official or has close ties with any such official or political party, whether personal, familial or

commercial, this should alert the employee to the possibility that any funds paid to the Consultant may be transferred, directly or indirectly, to a government official for an improper purpose. In this situation, it will become necessary to perform a thorough inquiry as to the exact nature of the relationship.

This also applies to any individuals or companies with whom you are doing business.

Representative lacks adequate facilities/ability/expertise to provide services required

The Consultant should have adequate facilities to perform the work for which he/she has been hired. If the Consultant does not have the office space, support staff, office equipment and materials, as well as the knowledge and/or expertise necessary to perform the job, this should alert the employee that there may be a reason other than good business judgment for hiring the Consultant. Prior to hiring the Consultant, the company should ensure that the Consultant has the capabilities, including personnel, facilities and financial resources, necessary to perform the job for which it has been hired.

This also applies to any individuals or companies with whom you are doing business.

Retention of a contingent-fee representative when procurement decision is imminent

Retention of a contingent-fee Consultant or a significant increase in the contingent fee when a procurement decision involving company products is imminent and there is little time remaining to perform significant additional services is suspicious and should be investigated.

Reference made by representative to "political contributions"

The Consultant makes reference to the necessity of making "political contributions" that, upon further investigation, may turn out to be illegal.

This also applies to any individuals or companies with whom you are doing business.

Arrangement is prohibited under local law

The arrangement in question is prohibited under the laws, regulations, administrative requirements or policies of the country in which the business is being done, or else the proposed payments exceed the permissible levels established by local law in the country.

To summarize, there are a number of steps that you can take to avoid violating the FCPA.

- Follow your corporate compliance programs carefully. It's detrimental to have a compliance program in place and not follow it.
- If you see a "red flag," report it to the Legal Department. Consider it a warning, ensure that due diligence is performed and proceed only with caution.
- Make full disclosure to your Legal Department and don't attempt to "structure" the transaction to mischaracterize its nature. The transaction should be totally transparent to all observers. Don't try to keep anything hidden.
- Always ask your Legal Department counsel about any situation that might be unclear or that involves legal judgments, such as whether the "grease" payment exception or an affirmative defense under the FCPA applies or whether and how to engage in a legitimate transaction with a government official.

PRACTICE QUESTION

Your company is having a hard time making a deal to sell aircraft to a foreign airline. You hear about a "miracle-worker" in that country who has a reputation for making deals that no one else can. **Is this a suspicious fact that should be told to the Legal Department as part of the due diligence?**

The Consultant's reputation should raise a "red flag," but the individual may be legitimate. A proper due diligence review on the Consultant should disclose whether he is just very competent or corrupt.

A partner in a foreign firm you are dealing with wants your company's down payment relating to an offset transaction to be wired into a Swiss-numbered bank account because that is where all up-front payments are deposited by his company, even though the company has no office in Switzerland. **Should this raise a "red flag"?**

The unusual nature of the method of payment is not changed by the fact that the partner's company maintains that this is its standard operating procedure. This should raise a "red flag."

In connection with a sale of an advanced air traffic control system that your company is trying to make to a foreign government, one of your sales reps in the country says that it would be helpful to the deal for you to contribute a small sum to the ruling party's political campaign. **Should this raise a "red flag"?**

References to political contributions should always be considered dangerous ground and must be investigated. In addition, local law in many countries prohibits political contributions by foreign persons.

You need to lease office space in-country in order to support a particular contract. A government official suggests that you lease the office space from a particular lessor. The quoted rate for the space is at market rate. **Do you run the risk of violating the FCPA if you lease the office space?**

Because the official suggested a specific lessor, he or she may have a pecuniary interest in the lessor. The situation needs to be investigated to determine the identity of the lessor and its relationship to the government official before the office space can be leased.

COMPANY POLICIES AND PROCEDURES

In addition to the Foreign Corrupt Practices Act, Lockheed Martin complies with a Consent Decree entered into in 1976 with the Securities and Exchange Commission, and a Consent Order entered into in 1978 with the Federal Trade Commission. This consent decree and consent order resulted from allegations of improper payments by Lockheed Martin to foreign officials for the purpose of obtaining preferential treatment.

The S-E-C Consent Decree prohibits: Offers to make payments, in any manner, directly or indirectly, to officers, employees, agents or representatives of commercial customers or foreign governments where the purpose of the payment is to influence the recipient to favor Lockheed at the expense of its domestic competitor or to prevent a competitor from competitively bidding, selling or doing business in competition with Lockheed, in the sale of aircraft (including parts and services) to foreign governments or foreign

businesses.

The F-T-C Consent Order, which is followed at Lockheed Martin, prohibits Lockheed from engaging in the following activities. In connection with the purchase and sale of securities, Lockheed shall not make any untrue statement or omission of material fact concerning payments or agreements to pay, directly or indirectly, officials or employees of any foreign government or any foreign government agency.

Also prohibited are agreements for or payment of "kickbacks" of corporate funds to officers or employees of the corporation by any third parties to whom corporate funds have been paid; Unlawful foreign political contributions; False or fictitious entries on the books or records or maintenance of "off the books" funds; Material transfers or disbursements of corporate funds without adequate accounting controls; and... Participation by officers or employees in any of these activities.

Also, the F-T-C Consent Order provides that Lockheed will not enter into any transactions with another party in which invoices are issued by such party as an accommodation to Lockheed that conceal Lockheed's costs from any Lockheed customer with a result that Lockheed's books and records do not accurately reflect the cost.

Lockheed Martin complies with both the S-E-C Consent Decree and the F-T-C Consent Order.

You must also be familiar with two important Corporate Policy Statements. Corporate Policy Statement number C-P-S-7-0-4 deals with the subject of International Consultants and describes the Lockheed Martin policies and the due diligence procedure with respect to international consultants.

Another key Corporate Policy Statement is number C-P-S-7-3-0, which deals with compliance with the Foreign Corrupt Practices Act. This policy provides guidelines as to acceptable practices related to providing meals, gifts or entertainment to foreign officials. Unless authorized by this policy, payment for meals, gifts or entertainment are prohibited.

The FCPA is complex in terms of its application. While few people intentionally set out to violate the FCPA, many day-to-day business dealings can be problematic under the law.

In this topic you'll see a number of scenarios depicting American business people conducting business in other countries. These scenarios focus on the "gray" areas surrounding the FCPA. Your job is to follow the discussions and make decisions or answer questions at key points.

“SOUNDS FISHY”

In this scenario, Bob Johnson, Vice President of Business Development at KTI Corporation, a multinational construction company, is meeting with Piri Lorenzo, assistant to the Interior Minister of a South American country. KTI is bidding in a highly competitive situation for a very large contract to expand the country's major airport and negotiations are in progress.

LORENZO: Last night's dinner was superb.

JOHNSON: Absolutely, that restaurant was excellent. I'm afraid if I stay down here much longer, I'm going

to need two seats for the flight back.

LORENZO: Keep up the racquetball and that will not happen. Now, on with business. Uh, once the airport expansion is complete, we will need the planes to come flying in, packed with tourists.

JOHNSON: Of course.

LORENZO: To make that happen, uh, we'd like to promote travel to our country. The best company to do this for us is Grand Turismo, a privately-owned firm that has been in business here for twenty years.

JOHNSON: That sounds like a well established company.

LORENZO: Yes. But a campaign of the size they want to undertake would cost a lot. For that reason, we would like you to invest in the company.

JOHNSON: How much are we talking about?

LORENZO: A million dollars over a three-year period.

JOHNSON: Hmm, that does seem like a lot of money.

LORENZO: Not when you consider what must be done to, uh, fully utilize the new airport. And, of course, the value of the contract you are seeking should also be taken into account, as well.

JOHNSON: Well, I suppose...

LORENZO: If you have any doubts about this, I should tell you that your competitor has already agreed to the investment.

A quick decision will be most appreciated. Now, has my deputy Carlos arranged for a tour of the old city this afternoon?

JOHNSON: Yes, he has.

LORENZO: Excellent! (STANDS) I will leave you in his capable hands.

PRACTICE QUESTION:

Would you counsel Johnson to perform due diligence on the Grand Turismo (a time-consuming process), or, because the competitor has already agreed to the same type of deal, tell him that the best course of action would be to agree in order to stay in the bidding?

Best answer: Perform due diligence:

JOHNSON: Senor Lorenzo, I'm afraid our preliminary inquiries into Grand Turismo have revealed a problem. Yes, it seems that one of the new partners in Grand Turismo is the brother-in-law of the Minister of the Interior. Now, this is of great concern to us because of the laws of our country pertaining to payments to government officials. I'm afraid we won't be able to commit to this investment until we examine this situation more closely. And this could take some more time.

LORENZO: Of course. But your company should not be concerned. As is often the case in small countries like mine, many government officials are related to company presidents and vice presidents. There is nothing to worry about. You go ahead with your inquiry, but the delay may cost you the contract.

JOHNSON: I'm sure you're correct about there being nothing to worry about. I'm convinced that my company will find this to be the case. But, senor, the consequences of a violation of U.S. law are too great not to make a more detailed inquiry. Please, be patient with us -- we will complete our inquiry as quickly as possible.

Bob Johnson acted correctly in this situation. The initial inquiry revealed that a partner in Grand Turismo had a family relationship to a government official.

The company must take the risk that this contract will be lost rather than proceeding without being sure that the relationship is not a way to funnel money to the Minister of the Interior.

Consulting the Legal Department was the right thing to do.

You have led Bob to the correct decision. By recognizing the "red flag" associated with transferring funds to a bank outside of the country in which the services are being rendered, Bob has avoided a potential FCPA violation.

Although it may turn out that the payment outside the country is appropriate under the circumstances, Bob should always consult the Legal Department before making any decision about which he might have been unsure.

While offset arrangements are often necessary to obtain business, it is easy to overlook possible FCPA risks like the ones presented in the "Sounds Fishy" scenario. A due diligence review on the companies involved will most likely be necessary, even if the situation is highly competitive and time is of the essence.

Consult with your Legal Department.

Under the FCPA, any time you don't pay attention to the issues raised by "red flags" you are putting yourself and the company at risk of violating the law. If something "sounds fishy," it very well may be fishy!

'TOM DOES TIME'

In this scenario, two employees of General Aircraft are trying to ensure the successful sale of several military transport aircraft to a southeast Asian country. Tom Hartley is General Aircraft's Regional Vice President and Frank Livingston is his assistant. General Aircraft has been assisted in its negotiations by Yong Consulting, a local company.

FRANK: With luck, I think we'll get this contract through.

TOM: Luck? It's worth eight hundred million. We'd better get it through. Are there any issues outstanding?

FRANK: Just the business of that additional fee Mr. Yong asked for.

TOM: You know, I'm glad we got the representative agreement approved before his wife was elected to Parliament. Ever since she left the company and he took over, there's one thing after another. Now this.

FRANK: Well, it's the first time he asked for the additional money, but another four million dollars is a steep increase considering he's already getting eight million.

TOM: It's a holdup, that's what it is.

FRANK: It comes out to three million per aircraft.

TOM: And if he doesn't get it..

FRANK: He may kill the deal. (PAUSE)

TOM: What do you think? Do we pay?

The following are ways Frank can respond. Read each one so you can select the best course of

action.

- “I don't think it's a good idea. If we gave money to Mr. Yong it could easily be construed as a payment to Madame Yong.”
- “Sounds like a lot of money. Can we get the amount down?”
- “Maybe there's another way to satisfy his request.”

How would you advise Frank to respond?

FRANK: I don't think it's a good idea. If we gave money to Mr. Yong it could easily be construed as a payment to Madame Yong. And, I know we've always had our concerns about one of our representatives being married to a member of Parliament, but now... we've just learned that she also has partial ownership of the company. That could be trouble.

TOM: I hear you, but sometimes in business you have to take a chance.

FRANK: What do you mean?

TOM: Frank, we're gonna make this sale. I'll you what, let's give Yong's company a subcontract to provide after sale support service for the aircraft. Say a two million dollar subcontract.

FRANK: For after sale support services? They won't have much to do under this contract.

TOM: Prepare a statement of work and we'll go over it.

Here are some ways Frank might respond:

- “Company policy will make it hard to hire these guys. We should turn him down altogether. If we don't make the deal, we'll just have to bite the bullet.”
- “I'll try and come up with something by morning.”
- “Maybe there's another way. I have a friend in accounting who might be able to help. I'll ask her.”

How would you advise Frank to respond?

The marital relationship between Mr. Yong and a member of Parliament, the partial ownership of the corporation that will act as the representative by that same member of Parliament and the timing and nature of the request for additional compensation all constitute "red flags" that must be reviewed and resolved before a decision can be made to proceed. Any attempt to disguise the nature of the transaction will only make matters worse and will not resolve the issue.

FRANK: Company policy will make it hard to hire these guys. I think we should turn him down altogether. If we don't make the deal, we just bite the bullet.

TOM: Nobody's gonna bite any bullets. See what you can come up with.

Later...

TOM: Congratulations, Frank. We did it.

FRANK: That we did.

TOM: Four aircraft. Eight hundred million dollars. What a deal!

FRANK: Yeah, I'm still concerned about that after sale support subcontract.

TOM: I know you are, Frank, and I've done something about that.

FRANK: What?

TOM: I had a private conversation with Mr. Yong just after the signing. And he's agreed to let us cancel the subcontract.

FRANK: That's great!

TOM: All we need to do is pay his company a contract cancellation fee.

FRANK: How much?

TOM: A million dollars.

Any attempt to cover up the payment could be used as an indication of corrupt intent on the part of Tom and Frank.

Three years after the General Aircraft payments to Mr. Yong and the subsequent cover up, a political opponent uncovered the original after sale support service subcontract and the cancellation agreement. It came to light that Mr. Yong's company had no after sales support service experience, no after sales support service workers and no after sales support service equipment.

The U.S. Department of Justice took note and began an investigation that focused on the relationship between Mr. Yong and Madame Yong as well as her activities as a member of Parliament. The government's position was that funds paid by the company to Mr. Yong were in fact intended for Madame Yong and were for the purpose of causing her to improperly exercise her authority and status as a government official to influence the purchase decision in favor of General Aircraft. The investigation led to indictments of the company along with Tom Hartley and Frank Livingston under the FCPA.

One year after the indictment, General Aircraft pled guilty and agreed to pay a record twenty-five million dollars in fines.

For their parts in the crime, both Tom and Frank were sentenced to jail terms of two years each.

Violations of the FCPA can result in any of the following penalties for companies or individuals involved in the prohibited activities: criminal and civil penalties and fines, imprisonment, suspension from government contracts upon indictment and/or debarment upon conviction and denial of export licenses upon indictment.

The fines required under the FCPA are extremely severe for criminal violations of the law and jail sentences for individuals are mandatory in many instances. The government can indict, prosecute and convict an individual for violation even if the company is not prosecuted.

UNDER THE SPOTLIGHT

Last year, Omega International, a manufacturer of jet engines, engaged the services of a Mr. Kurt Yodel, a European sales representative, in connection with a major sale to an international consortium. The sale was successful, but now, a year later, Mary Butler, Contracts Manager for Omega, has just received a disturbing phone call that she is discussing with her assistant, George Low.

MARY: I want to talk to you about a phone call I just got.

GEORGE: From who?

MARY: Remember Kurt Yodel?

GEORGE: Sure. He helped us out with that consortium deal last year.

MARY: Right. And the company's been sending him commission checks every two months, in step with the contract payments to us.

GEORGE: So what's wrong?

MARY: He just asked me to see if he could have his next check early. It's not due for another five weeks.

GEORGE: What's his problem?

MARY: Well, he was kind of vague about why he needs the money; but he offered to have the amount reduced.

GEORGE: So?

MARY: Legal performed a due diligence check on him. Do you remember if any irregularities turned up?

GEORGE: No. As I recall, Legal checked his business and banking references, the Embassy and the other companies who worked with him. They also interviewed him and reviewed our policies with him. Everything was okay.

MARY: Well, that's a relief. Do you think we should run this request by Legal -- just to be safe?

Do you think Mary and George should consult with their Legal Department in this situation?

GEORGE: I think that's a good idea.

MARY: Give counsel a call. Meanwhile, I'll wait to process his request for that check. No use running this one through the system if it might get turned down.

GEORGE: You're right.

Later...

MARY: Oh, George, it's been five days. Did you find anything out from Legal?

GEORGE: Uh, yes. It seems that our friend Yodel isn't providing the proper FCPA certificates with his invoices. Omega normally requires those certificates before making each payment. I don't know how they've been slipping through.

MARY: That's interesting. In the meantime, Yodel is screaming for his check.

GEORGE: Seems to me that we should get all the back certificates and insist on a new certificate before we pay him a dime.

MARY: Well, should I recommend that we hold his check or just let them pay?

What do you think Mary should do now?

MARY: Have you read the file on Yodel?

GEORGE: Sure did. We made the right move not sending Yodel anything.

MARY: Can you believe this guy? He was involved in a major business venture with the former cabinet minister.

GEORGE: The same guy who approved our contract.

MARY: What a mess.

GEORGE: Good thing we checked it out.

TOM: Omega's defense in face of an investigation will be based on the fact that it maintains and applies a rigorous compliance program, that it did appropriate due diligence before engaging Kurt Yodel to ensure compliance with the FCPA and that it did not have knowledge that Yodel would take actions in violation of the FCPA.

Omega will also point to the corrective actions it took once it identified a problem in the relationship with Yodel.

The follow up investigation by the Corporate Legal Department further strengthens this defense.

What can you and your company do to comply with the FCPA? Most importantly, due diligence, the duty to investigate, is essential in showing that you have looked into the backgrounds of all parties involved in the transaction to ensure there has been no corrupt intent. Much of the due diligence process involves developing a document trail showing the proper investigations are being made and that no reasons for suspicion are found. These findings in turn support a conclusion that the company did not have a corrupt intent.

In terms of what you can do, as an employee, here are some general guidelines.

- Don't make general statements that are not based on facts, such as "We can't do business over there without making a bribe."
- Don't speculate on legal consequences. Check with counsel whenever you are uncertain or detect a "red flag."
- Avoid the use of "guilt" language, such as "destroy that memo after you read it" or "for your eyes only."
- Never conceal or destroy "suspicious" documents. Leave it to the due diligence process to determine whether the suspicions can be resolved.
- Don't mislabel transactions. A commission fee is a commission fee no matter when it's paid or what it's called.

"GREASING THE WHEEL"

In this scenario, Arthur Hamilton is new to his job as a Foreign Business Representative for his company, Bravo Aircraft Corporation. Bravo just sold twenty aircraft to the state-owned airline in an emerging African republic. They are planning an in-country spares depot for the airline.

HAMILTON: Well, Niko, it looks like we're really making some progress on the spares depot. All we need now is the license and the permits.

NAKURA: No small task.

HAMILTON: No small task, indeed. It can be pretty tough getting the right paperwork in place.

NAKURA: I know someone who may be able to help -- Ademola Nnamdi.

HAMILTON: Why? What could he do?

NAKURA: I don't know how he does it, but he gets the job done when nobody else can. You need to know how to work the system to get licenses and permits in this country -- and, believe me, Mr. Nnamdi knows how.

I can arrange for him to come in and meet you.

The following are ways Arthur can respond.

- "Sure. If he's as good as you say he is, he can start right away."
- "How does he 'work' the system? I may need to do a background check first. No use getting him in here if he doesn't check out."

How would you advise Arthur to respond?

In order to ensure compliance with the FCPA, Arthur should follow up on the statement made by Nakura. In order to ensure compliance with the FCPA, Bravo should have hiring policies and procedures in place to

approve prospective contractors, and those policies and procedures should be followed. The investigation of Ademola Nnamdi determined that he always "gets the job done when nobody else can" because he is the nephew of the Commerce Minister, to whom part of Nnamdi's compensation is always paid.

NAKURA: There is another matter we need to discuss.

HAMILTON: What's that?

NAKURA: The equipment that's coming in, it's very expensive.

HAMILTON: I'll say.

NAKURA: And the area we're bringing it into, well, it's not the safest at night.

HAMILTON: So? I see the police all over the place. I'm sure they'll be watching our building, too?

NAKURA: There is watching...and then there is watching.

HAMILTON: I see.

NAKURA: I have been told by the Captain of the police force that his men will be extra attentive to us for a small fee.

HAMILTON: How small?

NAKURA: Five hundred U.S. dollars a month.

The following are ways Arthur can respond.

"That doesn't sound like a lot to keep our stuff safe. Okay."

"That's extortion. I'm not paying a dime. You tell him it's a violation of one of our laws for us to pay."

"I'd better check with corporate counsel on that."

How would you advise Arthur to respond?

Check with counsel before making any "grease" payment.

HAMILTON: I guess that just about wraps it up for today, Niko.

NAKURA: There is one more thing. This one has to do with our marketing campaign to the Navy. You know Kalib Kehinde, the Undersecretary of the Ministry of Defense?

HAMILTON: Yes.

NAKURA: Well, he is coming to tour our facilities in the U.S.

HAMILTON: Yes, I know. I believe everything is set for the visit.

NAKURA: Evidently, this is his wedding anniversary and he wants to bring his wife along.

What would you advise Arthur to say at this point?

"Sure, tell him bring her along."

"Not unless he pays for her travel and expenses."

"We'll pick up her airfare, but if she wants to do any shopping, she's on her own."

There is no clear cut answer in this situation, however it is very unlikely that the company would pay any of the costs.

If other spouses are to be involved in the business entertainment, the expenses might be paid. However, shopping or other personal activities would not be paid for by the company.

If no other spouses are involved, the expenses should probably not be paid by the company. In addition, all of the arrangements must be found to be legal under local law.

The FCPA allows for the payment of business or entertainment expenses in connection with the promotion or demonstration of products or services, or the execution or performance of a contract. These expenditures must be reasonable in amount and they must have a legitimate purpose. There is no defense available based simply on the small size of the expenditure.

In the situation we have just seen, it is unlikely that the company would pay any of the spouse's expenses.

"DOUBLE DEALING"

In this situation, AeroTech, a U.S. company, is participating in a competitive bid to sell helicopters to a South Pacific nation. The helicopters have significant maintenance requirements, and Pomare Turtola, a consultant to AeroTech, is talking to Dan Nichols, AeroTech's Director of Operations.

TURTOLA: This bidding you're in is tough.

NICHOLS: Tell me about it. We seem to revise our proposal every two weeks.

TURTOLA: I know. Well, I have an idea that may help.

NICHOLS: What's that?

TURTOLA: Your helicopters have significant maintenance requirements and I'm thinking that AeroTech should start up a joint venture company to do the maintenance. Starting a new maintenance company over here might make the whole deal more attractive.

NICHOLS: You think so?

TURTOLA: Definitely. And I've found you a local company that might be a good partner for this deal, and I had their Legal Department draw up a proposal for the new company. (PAUSE) Why don't you take a look at it?

NICHOLS: Sure. I'll pass it on to the AeroTech Law Department back in the States.

TURTOLA: Let me know what they say as soon as possible. It would be nice to wrap this up before winter.

NICHOLS: Okay.

TOM: Following its standard practices, AeroTech did a thorough due diligence on the proposed new company. They found no reason to suspect any problems in forming the joint venture and the new company was formed.

But a surprise was in store for Dan when he ran into Santon Chapel, the South Pacific nation's Secretary of Labor, coming out of a meeting with Pomare Turtola.

TURTOLA: Dan, good to see you. Let me introduce Santon Chapel, Secretary of the Labor Department.

NICHOLS: Ah, yes, Secretary Chapel, I just saw you on the news last night in those union negotiations. Very impressive the way you handled things.

CHAPEL: Thank you. And we've got some good news, Dan.

NICHOLS: Oh?

TURTOLA: There will be an announcement soon that AeroTech's won the bid. It was that joint venture that did it.

CHAPEL: And I'm happy to be part of this whole operation.

(DAN LOOKS PUZZLED)

TURTOLA (To Nichols): Secretary Chapel has a piece of the action. Should Dan disclose this meeting to AeroTech's Legal Department?

TOM: Dan informed AeroTech's legal department about the meeting with Santon Chapel. At this point, AeroTech would check out Chapel's involvement in the joint venture as well as the relationships involved. It would not go forward with the joint venture without some level of comfort. But Dan's surprises weren't over. A few weeks later, he had a phone call from Secretary Chapel.

NICHOLS: Mr. Secretary. What a pleasant surprise to hear from you. How is everything?

CHAPEL: Fine, fine. We've found a great location for the office and we're hiring workers. Now, when's your company going to close the deal?

NICHOLS: Our counsel back in the states is still looking at it.

CHAPEL: Well, they better not look too long.

NICHOLS: What do you mean?

CHAPEL: I mean if this thing drags out too much longer, your win may turn into a loss. Our joint venture maintenance company was a big part of the helicopter deal.

NICHOLS: I know.

CHAPEL: But there is something you could do to keep things moving.

NICHOLS: What's that?

CHAPEL: A startup payment for the new company. A million dollars.

NICHOLS: Wow, that sounds like a lot for a startup payment.

CHAPEL: Not compared with what you're making on the sale of those choppers. We need to have top-notch facilities. And don't forget who helped you win the deal.

NICHOLS: Who would that be?

CHAPEL: Let's just say Pomare Turtola didn't do it all by herself. Now, when can you get me that money?

NICHOLS: I'll call you later in the week.

CHAPEL: Excellent.

NICHOLS: Okay. Take care now.

Should Dan disclose this phone call to AeroTech's Legal Department?

TOM: Dan informed AeroTech's Legal Department about the phone call from Secretary Chapel. This call, along with the material uncovered by the investigation of Chapel's relationship to the joint venture company, led to AeroTech's decision to cancel the deal and back out of the joint venture. It was a costly decision, but the proper one.

TOM: Effective disclosure is one means of demonstrating lack of corrupt intent. In the situations in which Dan reported the suspicious nature of Secretary Chapel's behavior, Aerotech was able to avoid any FCPA violations.

LET'S HELP EACH OTHER OUT

Stan Hewitt is Vice President of International Marketing for his company, Amatron, a maker of airplane navigational equipment. Amatron is negotiating a five-hundred-million-dollar sale to Dunderbee, a foreign manufacturer of jet aircraft. The country in which Dunderbee is located is requiring Amatron to contribute two hundred million dollars in offset credits.

Brooke Foster is the President of Dunderbee. Let's join them in Brooke's office.

FOSTER: You know, Stan, this deal is going to be a great one. Both our companies, and our countries, will

win with this one.

HEWITT: Absolutely. It couldn't be better.

FOSTER: Now, about that offset arrangement that's required. We've got a great little outfit called Collins Consulting. And, they're considered first-rate deal-makers.

HEWITT: So we hire them and they propose an offset for Amatron to take part in.

FOSTER: Right.

The following are ways Stan can respond.

- "Sounds good to me. Hire them."
- "My company will have to run some checks on Collins."
- "We're not really interested."

How should Stan respond?

The proper course is to investigate Collins Consulting as part of the due diligence process. By investigating, you make sure the company is legitimate and determine whether there are any "red flags" present that require further inquiry.

HEWITT: It's a possibility, but first my company will have to run some checks on Collins. Just routine.

FOSTER: Sure, Stan, no problem. But get your people to work on it so we can move this through.

HEWITT: I sure will.

KIM: During the investigation, it was discovered that a cousin of the Interior Secretary is on the board of Collins Consulting. This cousin has been a board member for ten years and is considered reputable.

What would you advise Stan to say on behalf of Amatron?

- "Let's go ahead."
- "We need to do a little more investigation..."
- "We can't go through with the deal."

Additional investigation should be done to define the exact relationship of the cousin and specific role with the company and the pending deal. It may be possible to use the company.

KIM: Amatron, and Stan Hewitt, under pressure to make a deal, did not investigate further. Imagine Stan's surprise when, a year later, he received this phone call from Brooke Foster.

HEWITT: Stan Hewitt. Hey Brooke, how's everything going?

FOSTER: Not great, Stan. I guess you haven't heard the news yet.

HEWITT: What news?

FOSTER: Do you remember Collins Consulting?

HEWITT: Well, sure I do. They arranged that great offset deal for us. I don't know how they did it.

FOSTER: Well, you're about to find out.

HEWITT: I don't think I like the sound of that.

FOSTER: You know that woman on the board, the Interior Secretary's cousin?

HEWITT: Yeah, what about her?

FOSTER: Well, she's been accused of passing money to the Interior Secretary.

HEWITT: What!?

FOSTER: Yes, they're reporting that she paid him off to help get the job and collect a commission on the

offset transaction.

HEWITT: Well, how could that happen? We checked them all out.

FOSTER: Well, it looks like somebody dropped the ball.

How might Hewitt respond?

- "We conducted an investigation, did due diligence. Everything looked fine."
- "We had no idea they were crooks."
- "We didn't intend for anyone to take a bribe."

What is Amatron's defense if accused of violating the FCPA?

There are no real "correct" answers here. Amatron should have investigated further, in spite of pressure to make a deal. And if there was any doubt, the wisest course would have been not to hire Collins Consulting.

The defense of "We didn't intend for anyone to take a bribe" is no excuse. This attitude could be construed as having your "head in the sand."

SUMMARY

By reviewing this report on the Foreign Corrupt Practices Act, you've learned that it's a complicated statute that imposes harsh sanctions on individual and corporate violators. Let's go over a few key points.

To review, the law was enacted in 1977 and amended in 1988. The act resulted from Securities and Exchange Commission investigations in the mid-70's, investigations that revealed that more than four hundred companies had made improper payments totaling over three hundred million dollars.

The Foreign Corrupt Practices Act contains two parts: one dealing with bribery, and the other dealing with proper record keeping. Violation of either part is punishable by large fines and up to five years in prison.

The antibribery provision basically prohibits corruptly paying or promising to pay anything of value to a foreign government official in order to influence the obtaining or retaining of business. The prohibition includes indirect payments -- paying any person who in turn will make an improper payment. An employee, director, officer, stockholder or agent may be convicted without his or her company having been found to be in violation of the Act, and fines levied against individuals cannot be paid or reimbursed by the employer.

One thing you can do to protect yourself and your company is to always observe the "red flag" concept when dealing with foreign agents, representatives, consultants, subcontractors, partners, distributors or other business associates. If you see anything that raises a "red flag" you should take extra precautions and consult your Legal Department.

A "red flag" is something that makes you suspicious that an improper payment may be paid. It raises an issue and is always something to look into.

If you are in an ambiguous situation, remember that you can always check with corporate counsel before making a decision about whether a payment, promise or gift is proper.

And remember, always check with counsel if a payment, promise or gift to a foreign official is being considered or in instances where foreign sales consultants, representatives or agents are being engaged or where special payments not included in the agreement are being made to them.

The scope of the Foreign Corrupt Practices Act -- and, by the way, the scope of other acts that prohibit bribery in countries around the world -- are such that corporations and their employees must do everything reasonably possible to avoid even the appearance that an improper payment has been made.

Those who fail to recognize this put the company in a precarious position and may face some very unpleasant personal consequences.

FCPA DOCUMENT

ACCOUNTING PROVISIONS

15 U.S.C.A. § 78m(b)(2), (4)-(7)(West 1981 and Supp. 1996)

Form of report; books, records and internal accounting; directives

§ 78m.

(b)(2) Every issuer which has a class of securities registered pursuant to section 78l of this title and every issuer which is required to file reports pursuant to section 78o(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any

differences.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 78l of this title or an issuer which is required to file reports pursuant to section 78o(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

CONTINUE = #20000

ANTI-BRIBERY PROVISIONS

15 U.S.C.A. 78dd-1 and 2 (West Supp. 1996)

§ 78dd-1. Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78l of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an 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—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate.

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) 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, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party

official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by the Attorney General

Not later than one year after August 23, 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(e) Opinions of the Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this

section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the issuer, be made publicly available regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(f) Definitions

For purposes of this section:

(1) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

(2)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a

result if-

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

(3)(A) The term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

(i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) processing governmental papers, such as visas and work orders;

(iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

§ 78dd-2. Prohibited foreign trade practices by domestic concerns

(a) Prohibition

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any

means or instrumentality of interstate commerce corruptly in furtherance of an 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—

(1) any foreign official for purposes of—

(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

(A)(i) influencing any act or decision of such party, official or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official or candidate,

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person; or

(3) 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, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for "routine governmental action"

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a "routine governmental action" by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that—

(1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political party's, party official's, or candidate's country; or

(2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to—

(A) the promotion, demonstration, or explanation of products or services; or

(B) the execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other

documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

All process in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Guidelines by the Attorney General

Not later than 6 months after August 23, 1988, the Attorney General, after consultation with the Securities and Exchange Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue—

- (1) guidelines describing specific types of conduct, associated with common types of export, sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and
- (2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of subchapter II of chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of chapter 7 of that title.

(f) Opinions of the Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall

be a rebuttable presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of subchapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General response to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and of potential liabilities under the preceding provisions of this section.

(g) Penalties

(1)(A) Any domestic concern that violates subsection (a) of this section shall be fined not more than \$2,000,000.

(B) Any domestic concern that violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2)(A) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any employee or agent of a domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully violates subsection (a) of this section, shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(C) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means—

(A) any individual who is a citizen, national, or resident of the United States; and

(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality.

(3)(A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if—

(i) such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such

circumstance does not exist.

(4)(A) For purposes of paragraph (1), the term "routine governmental action" means only an action which is ordinarily and commonly performed by a foreign official in—

- (i) obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
- (ii) processing governmental papers, such as visas and work orders;
- (iii) providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;
- (iv) Providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or
- (v) actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of—

- (A) a telephone or other interstate means of communication, or
- (B) any other interstate instrumentality.

To receive training credit for this module, you must complete the final quiz.

If you have access to the Lockheed Martin Intranet, Use Qwizard at URL:

<https://ctms.global.lmco.com/ctms/qwizard/Welcome.html>

Or, if you do not have Intranet access, take the final quiz via the external Qwizard site at URL:

<http://www.lockheedmartin.com/exeth/ctr.html> (select Compliance Training On-Line Quizzes - Qwizard).