

The Foreign Corrupt Practices Act

Gabriela N. Smith, Esq.

The Gabriela Noemí Smith Law Firm, PLLC

Exporting with the Experts

Richland College

Dallas, TX

November 7, 2015

The Basics

- The Foreign Corrupt Practices Act is a U.S. federal statute
- Has Extraterritorial application – that is, it applies to acts committed outside the U.S. as well as acts committed within the U.S.

Prohibited Acts

- **Anti-Bribery Provisions:** Making corrupt payments to foreign officials in order to obtain or retain business or to obtain a business advantage.
- **Accounting Provisions:** Imposes accounting requirements upon certain U.S. companies to ensure that business transactions are accurately reflected in the companies' books and records.
- The FCPA's anti-bribery provisions are enforced by the Department of Justice, and the accounting provisions are enforced by the Securities and Exchange Commission

Who Does it Apply to?

- U.S. Citizens and Permanent Residents
- U.S. Companies
 - A Texas LLC; a Texas Corporation
 - A New York Partnership, etc.
- Companies with securities listed in U.S. exchanges
- Persons and Companies that violate the FCPA in U.S. soil
- Those who aid and abet a violation

What is “Corrupt”?

- DOJ looks for indicia of improper payments
- Intent to induce improper use of official capacity
- Knowledge, willful blindness, deliberate ignorance
- Not just a stash of cash! Gifts, entertainment, lavish trips promises of employment

Foreign Government Officials

- Governments Agencies
- Departments
- Public international organizations
- Persons acting in official capacity
- Employees, agents, etc, of the above
- Private enterprises with a public purpose – utility concession

Sanctions

- Criminal
- Multimillion Dollar sanctions for companies and individuals
- Prison time for individuals

Examples

- a \$12,000 birthday trip for a government decision-maker from Mexico that included visits to wineries and dinners
- \$10,000 spent on dinners, drinks, and entertainment for a government official
- a trip to Italy for eight Iraqi government officials that consisted primarily of sightseeing and included \$1,000 in “pocket money” for each official
- a trip to Paris for a government official and his wife that consisted primarily of touring activities via a chauffeur-driven vehicle

Cite: A Resource Guide to the FCPA by the Criminal Division of the US DOJ and Enforcement division of the SEC.

Useful links

- <http://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>
- <http://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>
- <https://www.transparency.org/>
- <http://www.transparency.org/cpi2014/results>
- <http://www.metrocorp counsel.com/articles/13230/foreign-corrupt-practices-act-what-your-business-needs-know>

Thank You.

Gabriela Noemí Smith, Esq.
Managing Attorney
The Gabriela Noemi Smith Law Firm, PLLC
Offices in Dallas, Texas and Lima, Peru
+1 (214) 901 – 2010
gsmith@gnslawpllc.com
www.gnslawpllc.com