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Managing Foreign Corrupt Practices Act Risks of Gift, Travel and Entertainment Expenditures

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MANAGING FOREIGN CORRUPT PRACTICES ACT RISKS OF GIFT, TRAVEL AND ENTERTAINMENT EXPENDITURES

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Abstract

Significant increases in Foreign Corrupt Practices Act enforcement activities have heightened the legal risks associated with giving gifts or paying travel and entertainment expenses for U.S. firms when promoting their goods or services in foreign markets. This change in the external environment necessitates appropriate strategic adjustments and managerial actions. The lack of specific standards of conduct under the FCPA's general prohibitions requires that U.S. firms closely monitor the increasing number of investigations and legal actions initiated by the U.S. Securities Exchange Commission and the U.S. Department of Justice.

Introduction

As U.S. firms expand their presence in foreign markets, they need to account for the risks of inadvertently incurring legal liability under the Foreign Corrupt Practices Act ["FCPA" or the "Act"] that results from the use of gifts, travel and entertainment as part of their promotional efforts. What would otherwise be routine marketing and promotion activities aimed at wooing private sector domestic customers present a legal minefield for American businesses attempting to obtain business from foreign companies that have an element of government ownership or control, whether outright or because a manager also has a position in the host country government or political party.

This article provides a brief overview of the FCPA along with a more detailed explanation of the key provisions that heighten risks associated with the use of gifts, travel and entertainment to win contracts with foreign companies. It also describes the recent increase in FCPA enforcement actions by the United States Securities and Exchange Commission ["SEC"] and the Department of Justice ["DOJ"], along with the resulting fines and prison sentences. The paper then lays out the steps that U.S. firms seeking business abroad should take in order to minimize this legal exposure.

The Foreign Corrupt Practices Act

Originally passed in 1977, the FCPA arose out of an SEC investigation launched in the wake of the Watergate hearings. Publicly traded American corporations had concealed a variety of illicit payments in deliberately mislabeled accounts, from illegal domestic political campaign contributions to bribes paid to foreign government officials

(Sporkin, 1998). Congress responded to these revelations with passage of the FCPA, a statute mandating that publicly traded corporations keep accurate books and records, with the SEC given exclusive right to bring either civil or criminal proceedings to enforce the statute. Congress also included a requirement that corporations maintain an effective system of internal controls to insure accuracy in its books and records, along with a specific anti-bribery prohibition (Foreign Corrupt Practices Act, 1977).

In 1988, Congressional amendments legalized “facilitating payments,” also referred to as “grease payments,” to hasten the performance of ministerial functions, *i.e.*, administrative actions, such as an expedited issuance of permits or similar, non-magisterial actions to which the corporation was entitled under host country law (Foreign Corrupt Practices Act, 1988). Worried that American firms would suffer a competitive disadvantage relative to those in other industrialized countries that did not adhere to the FCPA bribery standards, the United States sought an agreement from those nations to pass similar legislation. This led to the Organization for Economic Cooperation and Development [“OECD”] Convention on Combating Bribery of Foreign Government Officials in 1997, in which 33 other economically advanced countries agreed to do so (OECD Convention, 1997). Congress last amended the FCPA in 1998, primarily to meet United States’ obligations as a party to the original 1997 treaty (Foreign Corrupt Practices Act, 1998). As of March 2009, 38 countries had ratified that treaty (OECD Anti-Bribery Convention, 2010).

Key FCPA Mandates

Any U.S. firm that uses gifts, travel and entertainment to promote its goods or services to prospective customers outside the country must understand both the accounting and anti-bribery prongs of the act. Key aspects of the latter prohibit payments to foreign officials for the purpose of obtaining or retaining business. More specifically, the FCPA renders illegal use of the mail or any … instrumentality of interstate commerce “corruptly’” to offer, pay, promise to pay or authorize any money or gift to any foreign official, *i.e.*, in an effort to gain improper advantage in order to obtain or retain business. The same prohibitions apply with respect any foreign political party or party official or any candidate for foreign political office. (Foreign Corrupt Practices Act, 1998). As noted above, an exception exists for a “facilitating or expediting payment” (sometimes unofficially referred to as “grease payments”) to expedite or secure the performance of a routine ministerial governmental action (*id*).

The FCPA includes two affirmative defenses[1] that provide exceptions to the above-described prohibitions. The first is when the defendant can show that the payment or promise was legal in the host country. The second applies where the defendant can prove that the payment, gift, offer, or promise was: 1) a reasonable and *bona fide* expenditure (such as travel and lodging expenses) for the foreign official directly related to either the promotion, demonstration, or explanation of products or services or, 2) the

[1] An affirmative defense is "[a] defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all allegations in the complaint are true." (Black's Law Dictionary, 1999, p. 430).

performance of a contract with a foreign government or agency thereof (*id*).

FCPA violations may lead to civil and criminal penalties, including substantial fines and prison terms (*id*). Indictment alone may cause the individual or firm to be barred from doing business with the federal government. An FCPA conviction may lead to denial of export licenses, a ban from the securities business and debarment from participation in the Overseas Private Investment Program (U.S. Department of Justice, Foreign Corrupt Practices Act, Anti-Bribery Provisions, 2010).

The United States Department of Justice ["DOJ"] carries out all criminal enforcement under the FCPA. Both the SEC and the DOJ can bring civil enforcement actions, depending upon the defendant and the particular charge. No private party may bring a direct action for damages under the act (Lamb v. Phillip Morris, 1990), but a government conviction can give rise to a civil suit under either federal or state Racketeering Influenced or Corrupt Organizations ["RICO"] statutes (Racketeering Act, 2010) brought by a competitor who suffers economic harm from a violator's illegal action. A successful recovery under such a statute includes three times the actual loss (treble damages) plus attorneys' fees (Environmental Techtonics vs. Kirkpatrick, 1987).

The DOJ Opinion Release Procedure

The FCPA mandates that the U.S. Attorney General, or a representative of that office, provide guidance to any firm that requests an opinion about its enforcement intentions concerning specified prospective conduct (Foreign Corrupt Practices Act, 1998; Code of Federal Regulations, 2010). This DOJ Opinion Release Procedure offers a means for a company subject to FCPA jurisdiction to reduce its risk of prosecution before undertaking a transaction that might or might not constitution a violation. The DOJ makes these Opinion Releases publicly available on its website (see www.usdoj.gov,) although a requesting firm [the "Requestor"] may ask not to have its name or proprietary information disclosed. The Attorney General must respond within 30 days of receiving such a request. The DOJ creates a rebuttable presumption of legality when it issues an opinion that the proposed action conforms to current enforcement policy. A review of these Opinion Releases offers further information about the standards and interpretations of the statutory language.

Recent Increases in FCPA Enforcement Activity

Both the SEC and DOJ have significantly increased FCPA enforcement over the past six years (Searcy, 2009, May 26). In 2007, the DOJ brought 16 enforcement actions in 2007, up from four in 2002 (U.S.DOJ Press Release, 2008, March 27). It launched 55 investigations during 2007 – 2008 (Wrage, 2008)**;** by 2009 it had 120 companies under investigation. (Searcy, 2009, May 26).

This emphasis upon pursuing FCPA violators reflects agency decisions regarding internal resource allocations. Within the DOJ, the Federal Bureau of Investigation ["FBI"] created a team of special agents in 2007 to work on FCPA cases (Wrage, 2008).

In 2009, the SEC likewise established a special unit, one of only five within the agency, to focus on FCPA violations (Khuzami, 2009).

These federal efforts have led to substantial settlements by organizations that chose to avoid the additional time and expenses of ongoing investigations, in addition to the risks of trial. In 2010, Daimler AG agreed to plead guilty to two FCPA violations and pay $93.6 million in criminal fines. The company also had to disgorge $91.4 million in profits to resolve a related civil action, also brought by the SEC, for a total cost of $185 million (U.S. DOJ Press Release, 2010). The U.S. jurisdiction over these actions by a German corporation arose from a "nexus" to the U.S. that included actions by American firms' foreign subsidiaries and the movement of funds used in corrupt payments through U.S. banks; moreover, FDCPA jurisdiction extends to foreign companies whose securities trade on American exchanges (Foreign Corrupt Practices Act, 1998).

In 2007, Baker Hughes entered into the then-largest settlement of FCPA violations by agreeing to pay a total of $44 million in the form of an $11 million criminal fine to the DOJ, $10 million in civil penalties to the SEC and disgorgement of $24 million in profits, also to the SEC. The Baker Hughes penalties arose out of their improper payments in Kazakhstan to obtain contracts to provide various oil services to a state-owned venture (U.S. DOJ Press Release, 2007, April 26).

In December 2008, Siemens AG, another German firm with a nexus to the U.S., settled an SEC complaint that alleged multiple FCPA violations between 2001 and 2007. Siemens agreed to disgorge $350 million in profits to the SEC and paid a $450 criminal fine to the DOJ in a related action. A German investigation led to additional penalties for these violations. Total payments to U.S. and German authorities combined exceeded $1.6 billion SEC (U.S. SEC, 2008).

In addition to taking legal action against firms that violate the FCPA, federal agencies have also made a point of prosecuting individual managers. The SEC filed actions against the former Chairman and CEO of Schnitzler Steel Industries for its activities in China, and another against the CEO and Chairman of Syncor International for alleged bribes of doctors who worked for public hospitals in Taiwan (Thomsen, 2008). Mark Mendelsohn, former deputy chief of the DOJ fraud section of the criminal division, observed, "To really achieve the kind of deterrent effect we're shooting for, you have to prosecute individuals ... If the only sanctions out there are monetary, penalties against companies could be interpreted as the cost of doing business," Mr. Mendelsohn says. "But when people's liberty is at stake, it resonates in new ways" (Searcy, 2009, October 8).

Thus, "Albert" Jack Stanley, a former executive of Halliburton Company, received a seven year jail sentence pursuant to a guilty plea in response to charges of FCPA violations, along with mail and wire fraud, in efforts to secure natural gas contracts in Nigeria. He further agreed to cooperate in continuing investigations of related transactions, as well as $10.8 million in restitution payments (U.S. DOJ Press Release, 2008, September 3).

Risks and Uncertainties Regarding Gifts, Travel and Entertainment

The increase in attention and resources devoted to FCPA enforcement significantly increases the risks to U.S. firms doing business internationally with respect to a number of practices, not the least of which involve gifts, travel and entertainment aimed at promoting their products and services to foreign customers. While the FCPA includes several sections that directly affect such promotional activities, considerable uncertainty exists as to their interpretation and application; therefore, firms must pay close attention to such provisions and proceed with due caution. In particular, businesses should take care to ascertain whether an employee of a foreign company falls within the statutory definition of a "foreign official," and whether travel and entertainment expenses are "reasonable and *bona fide*."

In the United States, the distinction between a government agency and a privately owned or operated business non-profit organization is clear and unambiguous; therefore, a marketing manager has no problems distinguishing private sector employees from government officials or public sector employees. Such distinctions can be murkier in other parts of the world. A U.S. firm that does not take care to ascertain whether a customer fits the FCPA definition of a "foreign official" can violate the statute because they have improperly directed promotional efforts to such a person. The act itself defines "foreign official" as:

> … any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization (Foreign Corrupt Practices Act, 1998).

Both the SEC and the DOJ have taken the position that this provision encompasses employees of state-owned or state-controlled entities because such operations amount to "instrumentalities" of foreign governments (U.S. SEC, 2005; U.S. DOJ Press Release, 2006). Thus, physicians and other laboratory workers in government run Peoples' Republic of China hospitals were regarded as "foreign officials" under the FCPA when Diagnostic Products Corporation (Tianjin), the Chinese subsidiary of the U.S. firm Diagnostic Products Corporation, was charged with paying nearly $1.6 million in illegal "commissions" in order to obtain the hospital's business. DPC (Tianjin) settled the resulting criminal charges with the DOJ for $2 million. Its U.S. parent company (DPC) agreed to disgorge approximately $2.8 million in profits, an amount equal to its net gains in the PRC during the time of the violations, in order to resolve SEC charges that arose out of the same payments (U.S. DOJ Press Release, 2005).

The public-or-private-entity question becomes even more complex as governments in parts of the world where state ownership of the means of production begin a process of "privatization," such as Russia, Eastern Europe and China. This transfer of ownership from public to private hands may involve less than a 100 percent of interest in an enterprise. Even if the government in question retains only a small stake in the new firm, the officers and employees may still fit into the "foreign official" category. And, government control may continue after complete privatization of ownership, rendering company personnel "instrumentalities of a foreign government." (Pederson, 2008; Cohen, Holland and Wolf, 2008).

Nonetheless, the FCPA does not outlaw gifts, travel or entertainment for foreign officials altogether. The legislative history of the Act strongly indicates that Congress meant to permit some such activities as part of legitimate marketing and promotional expenditures. As noted in a frequently quoted passage from the legislative hearings about the affirmative defenses in the statute:

> "This exemption ... is meant to sanction legitimate informational and promotional expenditures. Examples are paying travel and lodging expenses of a foreign official required for his attendance at a seminar concerning a domestic concern's goods or services; or transporting a foreign official to the site of a manufacturing plant for an inspection tour as part of an effort to persuade the official to contract for the building of a similar plant in his country. While such activities are instrumental to obtaining business, in that they may persuade the official of the quality of a business' products or services, it is not expected that the official will give business to the concern in return for the incidental value of the travel and lodging provided. Given the absence of a *quid pro quo* understanding, these activities are not in violation of the current law (Hearings on H.R. 2157, 1983).

Gifts

The FCPA prohibits gifts to foreign officials when given with "corrupt intent," *i.e.*, to obtain or retain business or to influence any act or decision of a foreign official in his official capacity (Foreign Corrupt Practices Act, 1998). While this unequivocally applies to a *quid pro quo* transaction where the gift amounts to a bribe, it does not forbid all gifts. The statute specifically allows gifts to foreign officials, provided they are "*bona fide,*" lawful in the host country, reasonable in amount and directly related to promotion of the donor's business or in connection with the execution of a contract (*id*). In the absence of further statutory clarification, the DOJ has adopted a "facts and circumstances" approach to enforcement, as reflected in its advisory opinions. Thus, in determining whether a particular gift violates the statue, the DOJ has considered whether:

- the gift violates host country law
- the ceremonial value of the item exceeds its intrinsic value
- the cost of the gift does not exceed $500 per person (in 1981)
- the expense is commensurate with the legitimate and generally accepted local custom for such gifts by private business persons in the country (U.S. DOJ Opinion Release No. 81-01, 1981)

The DOJ has specifically approved modest gifts of product samples from a U.S. firm to prospective foreign customers (U.S. DOJ Opinion Release No. 82-01, 1982).

Black and Witten (2010) maintain that the DOJ probably cannot show that corrupt intent motivated a gift where the gift is:

- nominal in value
- not in the form of money
- permitted under the laws of the host country
- customary, in type and value, in the host country.
- made at an appropriate time and in appropriate circumstances
- made as a courtesy or token of regard or esteem, or in return for hospitality
- given openly, rather than secretly
- accurately reflected on the FCPA-covered entity's books and records. [I1 Complying with the Foreign Corrupt Practices Act Division I TEXT Chapter 4 Recurring Issues under the Anti-bribery Provisions I1-4 Business Law Monographs § 4.03 Copyright 2009, Matthew Bender & Company, Inc.]

Travel and Entertainment

The same FCPA standards regarding gifts apply to travel and entertainment expenses; hence, the same kinds of uncertainties resulting from lack of statutory guidance as to what is permissible (Foreign Corrupt Practices Act, 1998). As with gifts, the FCPA specifically allows payment of “reasonable and *bona fide*” travel and entertainment expenses to foreign government officials as an affirmative defense. Thus, if a U.S. firm can show that such expenditures were “directly related to” either the promotion, demonstration, or explanation of products or services, or the execution or performance of a contract with a foreign government or agency, it does not violate the act (*id*).

In the absence of more explicit guidelines regarding the payment of travel and entertainment expenses for foreign officials with whom a U.S. organization seeks to do business, one must make inferences from SEC and DOJ litigation settlements, as well as the latter’s Opinion Releases in response to inquiries from those uncertain about whether a proposed action would trigger prosecution.

In a leading case, United States v. Metcalf & Eddy (1999), the DOJ achieved a settlement for alleged travel and entertainment violations that resulted in a $400,000 civil fine plus $50,000 for litigation expenses levied against the defendant, an environmental engineering firm that sought contracts in Egypt through the United States Agency for International Development. The DOJ Complaint (U.S. v. Metcalf & Eddy, 1991) cited excessive *per diem* payments to an Egyptian government official who had yet to recommend awarding a contract to the U.S. firm. The DOJ charged additional violations because the defendants had paid travel and entertainment expenses for the official’s wife and children, including first class airfare on their international flights. The defendant firm subsequently received both the official’s recommendation and the contract. In addition to claiming that payment of these expenses violated the anti-bribery provisions of the

FCPA, the Complaint charged that defendant had failed to maintain adequate books and records that properly recorded those payments (Black and Witten, 2008; Black and Witten, 2009).

In 2006, the SEC filed suit against Tyco International for FCPA violations that included improper travel and entertainment expenses paid by its South Korean subsidiary to South Korean officials. The Commission specifically faulted Tyco for "… failure to implement procedures sufficient to prevent and detect FCPA misconduct, despite knowledge and awareness within the company that corruption and illicit payments were common practices in the foreign country where the unlawful payments were made." (U.S. SEC v. Tyco International, 2006). The company's use of false invoices to conceal illegal payments violated both the record-keeping and anti-bribery provisions of the Act. Tyco paid a $50 million civil penalty to settle this and related matters (U.S. SEC, 2006).

The DOJ has also prosecuted individual managers for FCPA violations, as in the case of David Pillor, Senior Vice President for Sales and Marketing at InVision, a company that manufactured explosive detection systems used by airports. Regional Sales Managers in China, the Philippines and Thailand advised him that local distributors were using Invision payments for gifts, improper travel expenses and other payments to government officials in order to obtain business. Pillor did not acknowledge or respond to any of their messages about these payoffs, which led to the SEC charges for failure to maintain an adequate system of internal controls and indirectly causing the falsification of a book, record or account. As part of a settlement agreement, he personally paid a $65,000 civil penalty (U.S. Securities and Exchange Commission v. Pillor, 2006; U.S. SEC, 2006).

Dow Chemical Company settled a 2007 SEC action for illegal payments by a subsidiary to government officials in India that included improper gift, travel and entertainment expenses. Over a six year period, these payments totaled approximately $200,000. Dow paid a $325,000 civil penalty and agreed to a cease and desist order against further violations of the books, records and internal controls requirements under the Act (U.S. SEC, 2007, February 13).

Both the SEC and the DOJ instituted legal actions against Lucent Technologies for numerous travel and entertainment violations in connection with telecommunication contracts in China with state-owned and state-controlled enterprises. Between 2000 and 2003, both before and after obtaining these contracts, Lucent paid for approximately 315 Chinese government officials trips to the U.S. and other countries, 65 of which came before the sales were closed. Lucent recorded the expenses in its "Factory Training Account," even when the Chinese officials did not visit any factories. Instead, they spent time in Hawaii Las Vegas, the Grand Canyon, Niagara Falls, Disney World, Universal Studios and New York City. Post-sale, Lucent paid for Chinese employees of these state enterprises (which makes them "foreign officials" under the Act) to visit the United States for factory inspections and training. Lucent, having outsourced all its manufacturing by 2001, no longer had any U.S. factories to tour. Instead, the trips consisted of sightseeing in the same places as the pre-sale travel. Lucent paid $1 million criminal fine to resolve the resulting DOJ action and a $1.5 million civil penalty to settle with the SEC (U.S. DOJ Press Release, 2007, December 21; U.S. SEC, 2007, December 21).

In a similar 2009 case, the DOJ and SEC brought actions against UTStarcom, Inc. (UTSI), a U.S. telecommunications company that markets network equipment and handsets. UTSI's China subsidiary, UTStarcom China Company, Ltd. (UTS-China) paid for the state-owned Chinese telecommunications firms' employees' trips to UTSI factories in Hawaii, Las Vegas and New York City for training, even though UTSI had no factories in those places and conducted no training. The SEC contended that defendant also provided lavish gifts and all-expenses-paid executive training programs for current and prospective customers in China and Thailand. To settle this matter, UTSI agreed to pay a $1.5 million penalty settlement of the DOJ case and another $1.5 million to the SEC (U.S. DOJ, 2009; U.S. SEC, 20009; U.S. Securities and Exchange Commission v. UTStarcom, 2009).

Indications of travel and entertainment expenses for foreign government officials that the DOJ will not challenge appear in its Opinion Procedure Releases. For example, a U.S. insurance firm (the "Requestor") advised the DOJ that it intended to pay travel expenses for five foreign officials to visit the Requestor's offices, meet with insurance regulators, other industry groups and other insurance companies in order to gain a "practical understanding" of how mutual insurance companies work in the U.S. The Requestor had no immediate plans to enter the foreign country's market, but anticipated that sponsoring this "Study Tour" would fulfill a requirement under that country's law for obtaining a business license there at some future date. The Requestor stated that it would spend an estimated $16,875 for economy airfare, lodging, transportation, a $35/day *per diem* and occasional tourist activities. The Requestor specified that it would not select the foreign officials for the tour and would not provide any gifts or tokens to them (U.S. DOJ Opinion No. 04-04, 2004).

The DOJ approved a similar request by an unnamed U.S. firm that sought to invite six foreign officials for a promotional and educational tour of its domestic sites. Over four days, the Requestor intended to pay domestic economy airfare (the delegates would pay their own international transportation costs,) plus domestic lodging, local transport and meals. It further noted that it would not select the foreign official delegates, not pay any expenses for spouses, families or other guests, and that any souvenirs would be of nominal value and have the Requestor's name or logo. (U.S. DOJ Opinion No. 07-01, 2007).

A medical device manufacturer gained DOJ approval for providing 100 units of its equipment, valued at $1.9 million, to a foreign government official in charge of a testing program that the foreign country required before it could grant approval for sale of the devices through its government. This process required that any prospective vendor of medical devices had to provide enough products for a clinical test in ten local health centers. If its products passed the tests, the Requestor could then bid against other approved providers for contracts with a government agency that would resell the devices to patients at a subsidized rate. The DOJ specified that "The foreign government and Requestor jointly determined that the optimal sample size for such a study was 100 units … based on the size of the overall potential patient population in the country and the government's experience with other similar medical devices." Moreover, the "evaluation of the donated medical devices will be based on objective criteria that are standard for this type of medical device and that have been provided to the Department." (U.S. DOJ Opinion No. 09-01, 2009).

In light of the above, U.S. firms seeking or doing business with organizations owned, run or influenced by foreign governments should not:

- Offer any gifts other than token items, preferably with the U.S. firm's name and logo
- Pay any travel or entertainment expenses for spouses, other family members or guests of the foreign official
- Pay for international travel from the foreign official's home country to the U.S.
- Pay for first class travel or luxury hotel/resort accommodations
- Provide excessive *per deim* allowances
- Select the foreign officials for whom the U.S. firm will pay travel and entertainment expenses for inspection or training visits to U.S. sites
- Include elaborate sightseeing ventures, especially if they involve travel to places other than where the U.S firm has facilities
- Do anything that looks like an outright scheme in support of a *quid pro quo* understanding

On the other hand, U.S. firms that want to promote their goods and services to entities controlled or strongly influenced by foreign governments should:

- Periodically assess the risks of doing business with foreign entities that may have an element of government ownership or influence
- Devise specific policies for avoiding FCPA liability when conducting business with foreign customers
- Take care to determine whether a prospective customer fits the FCPA definition of a "foreign official," including whether that customer works for an entity that could be construed as "an instrumentality of a foreign government"
- Maintain careful records of travel and entertainment expenses with adequate bookkeeping and internal controls
- Audit all travel and entertainment reimbursements to assure that they are appropriate, accurate and properly recorded
- Provide FCPA training for marketing and accounting personnel
- Carefully justify in advance the legitimacy of providing product samples to a prospective foreign official customer in light of FCPA standards
- Take advantage of the DOJ Opinion procedure if at all concerned about the legality of providing a gift or travel and entertainment to a prospective customer who might have foreign official status under the FCPA.

Conclusion

Both the SEC and DOJ have significantly increased their FCPA enforcement activities over the past several years. As a result, U.S. firms operating in the global economy must be careful to ascertain whether they are dealing with an organization that has either a government ownership interest or sufficient government control to make it an instrumentality of a foreign government, thereby making that organization's employees foreign officials under the FCPA. The use of gifts or payment of travel and entertainment expenses to promote products and services to such foreign officials are permissible as long as they are "reasonable and *bona fide*." The absence of specific statutory guidance as to what fits this category makes what might be regarded as legitimate marketing and promotion activities within the United States legally problematic when dealing with a foreign customer that has some degree of government interest or control in its home country. Thus, U.S. firms cannot blithely assume that the same legal standards governing gift, travel and entertainment expenditures domestically also apply to their promotion and marketing strategies in foreign markets. The FCPA can be a minefield of legal liability for the uninformed or reckless.

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