



2011

Foreign Corrupt Practices Act



QIVLIQ LLC

Foreign Corrupt Practices Act

A Compliance Guidebook

Quick Facts

The Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. §§ 78dd-1, et seq.) is a United States federal law with two main provisions, one that addresses accounting transparency requirements under the Securities Exchange Act of 1934 and another concerning bribery of foreign officials. Although our company is privately held, many of our partner companies are publicly traded, and as a result, subject to the provisions of the Securities Exchange Act. This guide addresses only the anti-bribery provisions of the FCPA.

The **anti-bribery** provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. They also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

In short: The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business.

Investigate thoroughly all new partnership relationships carefully before engaging in joint manufacturing, sales, marketing or other activities overseas. Seek additional advice from the corporate counsel.

RELATED DOCUMENTS FOR REFERENCE:

QIVLIQ AUTHORITY MATRIX SECTION 1-21 AND 3-9
QIVLIQ CODE OF CONDUCT

WHAT IS THE COMPANY POLICY?

Simply stated, it is the policy of the company, its subsidiaries and affiliates, to comply with all laws, including the FCPA. Compliance with this policy is mandatory. No employee has the authority to violate or circumvent the provisions of the FCPA or to authorize, direct or condone violations of it by any other employee or by any agent.

No employee shall, either directly or indirectly, offer, promise, make, or facilitate the making of, payments to foreign officials or officials of a public international organization as are prohibited by the FCPA.

Any employee who has knowledge of facts or incidents which he or she believes may be in violation of this policy has an obligation, promptly after learning of such fact or incident, to review the matter with corporate legal counsel.

WHY IS THIS IMPORTANT TO ME?

The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. The FCPA potentially applies to any individual, firm, officer, director, employee, or Agent of a firm and any stockholder acting on behalf of a firm. Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate the anti-bribery provisions or if they conspire to violate those provisions.

Employees whose duties involve foreign companies or officials must be familiar with the FCPA and the host country laws on the subject. Hiring local agents or consultants can raise FCPA problems in at least two ways. First, hiring a government official as a consultant may in itself constitute a violation (direct payment). Second, U.S. companies can face FCPA liability based on bribes paid by their agents, if they authorize the payments or consciously disregard a risk that the agent will act improperly (indirect payment). A U.S. company or national may be held liable for a corrupt payment authorized by employees or agents operating entirely outside the United States, using money from foreign bank accounts, and without any involvement by personnel located within the United States. A foreign company or person is subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States.

A violation of the FCPA can lead to one or more enforcement actions against the employee and / or the company. A violation of the policy could lead to disciplinary action up to and including dismissal.

Unfortunately for businesses, there is little directive / regulatory guidance regarding the FCPA. Most of the court decisions have been case specific. Recent enforcement trends have led DOJ to expand a single company inquiry into full-fledged industry-wide inquiries. As the scope of the inquiry expands, smaller affiliated companies find themselves a target of interest.

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REQUIRED REVIEW AND APPROVAL

Any agreement with a non-U.S. company or when performance is required outside of the United States must be reviewed and approved by the Qivliq Corporate Counsel and the Chief Executive Officer. (See Section 03-09 of the Qivliq Authority Matrix)

Proposals to non-U.S. entities; shipping, hiring or performance required outside of the United States must be reviewed and approved by the respective Group president, Risk Management and the Corporate Counsel. (See Section 01-21 of the Qivliq Authority Matrix)

DUE DILIGENCE

Prior to engaging in a business relationship with foreign resellers; vendors, marketing or other consultants; export and other agents; sales, licensing and other representatives; lawyers; accountants; Joint Venture Partners or acquisition targets, appropriate due diligence must be performed by Risk Management and Corporate Counsel. An appropriate risk assessment must be performed, documented and retained on file. Matters to be evaluated include but are not limited to:

A verification of corporate records, including any history of corporate misconduct, litigation, or other controversial behavior such as significant political contributions or unreported government control.

Getting a clear understanding of the network of business partnerships or affiliations, including the reputation of the Company and its principals.

Identifying any relationship with current or former governmental or political figures/families.

If appropriate, conducting an on-site visit to validate the legitimacy of the Company's business operations.

Criminal history checks with appropriate agencies and publicly available records.

The Company's financial history, tax liabilities, revenue reporting -- ideally including some understanding of their funding and major clients.

An evaluation of the business/performance location to determine the country's level of risk (susceptibility to corruption).

Dependent upon the size or complexity of the proposed relationship, Corporate Counsel may determine that the assessment be conducted by an outside organization such as outside counsel or investigative agency.

REPORTING VIOLATIONS

REPORTING ACTUAL OR SUSPECTED VIOLATIONS

Employees should speak to his/her manager or to the appointed compliance officer if at any time they have any questions about proper business conduct. The corporate compliance officer is primarily responsible for overseeing and supervising compliance with Company policies, standards and procedures.

DUTY TO REPORT

Every employee, consultant, agent or other representative of the Company having information or knowledge of any actual or contemplated conduct or transaction which appears to violate the FCPA is required to report the matter promptly to his/her supervisor or manager; to the Ethics Officer or to the General Counsel. Reporting may be written or oral, and it may be anonymous. If requested to do so, the Company will consider keeping

the identity of the person disclosing such information confidential in so far as doing so does not impede an investigation or resolution of the matter.

To make an anonymous report or to make a confidential inquiry to the company, employees may contact our employee helpline at 1-888-4-QIVLIQ (1-888-474-8547). A report may also be made confidentially via email at 4givliqhelp@getintouch.com.

DUTY TO INVESTIGATE

Possible violations of the FCPA will be investigated promptly at the direction of the company General Counsel.

A reporting person's supervisor or manager, or the General Counsel, if the General Counsel deems it appropriate, is obligated to pursue the report and to inform the reporting person of its disposition.

NO RETALIATION

Employees at all levels are prohibited from retaliating against anyone for reporting in good faith a violation or suspected or potential violation of Company policies, standards or procedures.

INTERNAL COMPLIANCE REVIEWS AND AUDITS

The regular audits of the Company conducted by the internal and outside auditors will include procedures to ensure compliance with Company policies, standards and procedures with respect to the integrity of its books and records. The principals of risk management will be applied when selecting areas for review.

Appendix A - KEY TERMS EXPLAINED:

BUSINESS PURPOSE TEST

The FCPA prohibits payments made in order to assist the firm in obtaining or retaining business for or with, or directing business to, any person. The Department of Justice interprets "obtaining or retaining business" broadly, such that the term encompasses more than the mere award or renewal of a contract. It should be noted that the business to be obtained or retained does not need to be with a foreign government or foreign government instrumentality.

CIVIL SANCTIONS AGAINST BRIBERY

The Attorney General or the SEC, as appropriate, may bring a civil action for a fine of up to \$10,000 against any firm as well as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm, who violates the anti-bribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or (ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from \$5,000 to \$100,000 for a natural person and \$50,000 to \$500,000 for any other person.

The Attorney General or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the anti-bribery provisions.

CORRUPT INTENT

The person making or authorizing the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his official position to direct business wrongfully to the payer or to any other person. The FCPA does not require that a corrupt act succeed in its purpose. The offer or promise of a corrupt payment can constitute a violation of the statute. The FCPA prohibits any corrupt payment intended to influence any act or decision of a foreign official in his or her official capacity, to induce the official to do or omit to do any act in violation of his or her lawful duty, to obtain any improper advantage, or to induce a foreign official to use his or her influence improperly to affect or influence any act or decision.

CRIMINAL SANCTIONS AGAINST BRIBERY

The following criminal penalties may be imposed for violations of the FCPA's anti-bribery provisions: corporations and other business entities are subject to a fine of up to \$2,000,000; officers, directors, stockholders, employees, and agents are subject to a fine of up to \$100,000 and imprisonment for up to five years. Moreover, under the Alternative

Fines Act, these fines may be actually quite higher -- the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. Fines imposed on individuals may not be paid by their employer or principal.

DOMESTIC CONCERN

A "domestic concern" is any individual who is a citizen, national, or resident of the United States, or 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.

FACILITATING PAYMENTS FOR ROUTINE GOVERNMENTAL ACTIONS

There is an exception to the anti-bribery prohibition for payments to facilitate or expedite performance of a "routine governmental action." The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products; and scheduling inspections associated with contract Performance or transit of goods across country.

FOREIGN COMPANIES AND NATIONALS

"Foreign companies and nationals" are subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States.

FOREIGN OFFICIAL

A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity. This may include a member of a royal family, a member of a legislative body, or an official of a state-owned business enterprise would be considered a "foreign official." The FCPA applies to payments to any public official, regardless of rank or position. The FCPA focuses on the purpose of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment.

ISSUER

An "issuer" is a corporation that has issued securities that have been registered in the United States or who is required to file periodic reports with the SEC.

KNOWING

The term "knowing" includes conscious disregard and deliberate ignorance.

OTHER SANCTIONS

Under guidelines issued by the Office of Management and Budget, a person or firm found in violation of the FCPA may be barred from doing business with the Federal government. Indictment alone can lead to suspension of the right to do business with the government. The President has directed that no executive agency shall allow any party to participate in any procurement or non-procurement activity if any agency has debarred, suspended, or otherwise excluded that party from participation in a procurement or non-procurement activity. In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses; the SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA; the Commodity Futures Trading Commission and the Overseas Private Investment Corporation both provide for possible suspension or debarment from agency programs for violation of the FCPA; and a payment made to a foreign government official that is unlawful under the FCPA cannot be deducted under the tax laws as a business expense.

PAYMENT

The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value.

PRIVATE CAUSE OF ACTION

Conduct that violates the anti-bribery provisions of the FCPA may also give rise to a private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), or to actions under other federal or state laws. For example, an action might be brought under RICO by a competitor who alleges that the bribery led to the defendant winning a foreign contract.

ROUTINE GOVERNMENTAL ACTION

"Routine governmental action" does not include any decision by a foreign official to award new business or to continue business with a particular party.

THIRD PARTY PAYMENTS

The FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official.

Appendix B - RED FLAGS & CORRUPTION INDICATORS

A RECORDS CHECK REVEALS	<ul style="list-style-type: none"> <input type="checkbox"/> Ownership interest by foreign government or official. <input type="checkbox"/> Base of operations located in a country with high risk of corruption <input type="checkbox"/> Principals or other employees, who have been suspended, charged or prosecuted for alleged fraud, bribery, misrepresentation and/or any other criminal act. <input type="checkbox"/> Media reports of unethical or suspicious business conduct. <input type="checkbox"/> Financial risk – lack of timely payment history; pending bankruptcy; lack of sufficient financial support; questionable transactions. <input type="checkbox"/> Qualifications, workforce and assets are not indicative of industry standards or reported qualifications. <input type="checkbox"/> Employs personnel who are current or former government officials. <input type="checkbox"/> A relative or close family relation who has been or is involved with a government official or others in a position to influence business decisions. <input type="checkbox"/> The industry sector is susceptible to corruption
REQUESTS FOR INFORMATION AND REFERENCES	<ul style="list-style-type: none"> <input type="checkbox"/> References are uncooperative or less than forthcoming when answering questions. <input type="checkbox"/> Reference provided is a foreign government official or representative <input type="checkbox"/> A refusal to provide details of ownership, partners or principals. <input type="checkbox"/> A declination to allow access to financial records. <input type="checkbox"/> A declination to complete basic teaming agreement questionnaires. <input type="checkbox"/> A declination to agree to company Code of Conduct; anti-corruption policies. <input type="checkbox"/> A lack of internal policies regarding anti-bribery and acceptable business conduct
QUESTIONABLE BUSINESS PRACTICES	<ul style="list-style-type: none"> <input type="checkbox"/> Working with shell or holding companies – insufficient business reason. <input type="checkbox"/> Working with other third parties for which there is no apparent justification. <input type="checkbox"/> Lack of substantiation for payments; expenses that are unjustified; payments to middlemen not previously approved. <input type="checkbox"/> Requests unjustified additional funding for a specific deal. <input type="checkbox"/> Solicits special payments for outside, “extra-relationship” affiliates <input type="checkbox"/> Requests unusual payments in advance of a business decision. <input type="checkbox"/> Displays a propensity to “cut corners” or knowledge of “how to work the system” to get to a desired business outcome. <input type="checkbox"/> Asks for unusually high fees, commissions or discount in order to close a deal.

Appendix C – FOR MORE INFORMATION ...

1. The Foreign Corrupt Practices Act of 1977 (FCPA) (15 U.S.C. §§ 78dd-1, et seq.). Available on-line at: <http://www.justice.gov/criminal/fraud/fcpa/docs/fcpa-english.pdf>.
2. The Layperson’s Guide to the Foreign Corrupt Practices Act. Available on-line at: <http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf>.
3. The Qivliq LLC Code of Conduct. Available on-line at: http://www.qivliqethics.net/uploads/2/7/0/9/2709020/w_qivliq_code_v_3.0_document_aug_2010.pdf.
4. Part 3 of the Federal Acquisitions Regulation – Improper Business Practices and Personal Conflicts of Interest is available on-line at <https://www.acquisition.gov/far/current/html/FARTOCP03.html#wp265938>.
5. Part 25 of the Federal Acquisition Regulation – Foreign Acquisition. This part provides policies and procedures for (1) Acquisition of foreign supplies, services, and construction materials; and (2) Contracts performed outside the United States. It implements the Buy American Act, trade agreements, and other laws and regulations. It is available on-line at <https://www.acquisition.gov/far/current/html/FARTOCP25.html#wp225048>.