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9:00 AM - 10:30 AM

**204 – Doing Business in Difficult Countries:
What Would You Advise in this Scenario?**

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Chief Regulatory & Compliance Officer and DGC

ACADEMI LLC

Kristine Robidoux

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Gowling Lafleur Henderson LLP

Faculty Biographies

Jay G. Martin

Jay G. Martin is the vice president, chief compliance officer and the senior deputy general counsel for Baker Hughes Incorporated (BHI). Prior to joining BHI, Mr. Martin was a shareholder at Winstead Sechrest & Minick P.C., a partner at Phelps Dunbar and Andrews & Kurth, and the assistant general counsel of Mobil Oil Corporation's worldwide exploration and production division in Fairfax, VA. Mr. Martin has also served as general counsel of Mobil Natural Gas, Inc. in Houston, TX. Mr. Martin holds JD, MPA and BBA degrees from Southern Methodist University in Dallas, TX.

While in private practice, Mr. Martin was engaged in a wide variety of domestic and international energy transactions, and regulatory matters for natural gas exploration and producing companies, oil field service companies, marketers, pipelines and refiners. Mr. Martin's practice involved such diverse matters as participating in generic federal and state restructuring proceedings in the natural gas and electric industries, drafting virtually every type of domestic and international oil and gas agreement, working on mergers and acquisitions, asset acquisitions and divestitures, handling a significant number of energy lending transactions including but not limited to mezzanine and conventional production based financings and work-out situations, and advising clients on a wide variety of natural gas marketing and processing matters. Mr. Martin also regularly handled problems for clients arising under the Foreign Corrupt Practices Act, the U.S. Economic Sanctions Laws and Arab Boycott Regulation. In addition, Mr. Martin developed broad experience in crisis management, designed corporate compliance programs for clients, and conducted many types of internal investigations for clients.

Suzanne Rich Folsom

Suzanne Rich Folsom is the senior vice president, chief regulatory and compliance officer and deputy general counsel at ACADEMI, where she is establishing a best-in-class governance program for this leading defense security provider. Ms. Folsom is an expert in regulatory and compliance risk management and corporate governance. She has proven executive leadership skills at the world's largest and most diverse corporations and international organizations including AIG, the World Bank Group, the United Nations, O'Melveny & Myers LLP and Cadwalader, Wickersham & Taft LLP, and with the U.S. Government as well as the Hashemite Kingdom of Jordan.

Previously, Ms. Folsom was recruited by AIG to lead the regulatory and compliance team and install a best-in-class regulatory and compliance program, helping to remediate the company's material weaknesses. Ms. Folsom and her team were widely praised by international regulators for their extraordinary efforts during a time of heightened concern over the global financial crisis. Earlier Ms. Folsom served as the counselor to the president of the World Bank Group, director of the Bank's U.S. affairs and later director

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of its department of institutional integrity. She also served as the chief of staff to the Queen of Jordan, special assistant to Barbara Bush, and chief of staff to the co-chairman of the Republican National Committee, Maureen Reagan.

Ms. Folsom was educated at Duke University and Georgetown University Law Center. She has contributed to the global community through extensive volunteer and board work with Duke University and a number of international organizations focused on children, health and governance.

Kristine Robidoux

Partner

Gowling Lafleur Henderson LLP

ACC Annual Meeting

There Is No Black and White:

What would you advise in this scenario?

Workshop Objectives and Outcomes

- ✓ Overview of legal framework
- ✓ Provide a forum to discuss relevant business integrity issues and challenges
- ✓ Discuss real-life corruption issues and scenarios and propose practical solutions

1. Foreign Press Allegation Scenario

- Company is a dual (U.S./Canada) listed company in the telecommunications sector.
- Company has operations in a high-risk foreign market.
- After a change of government in the foreign market, it is alleged in the local foreign-language press that the company bribed the now former Telecommunications Minister to secure the award of a key license.
- The allegations of corruption are non-specific, citing anonymous sources in and out of government, but do identify the company's country manager as a person who allegedly "wined and dined" the Minister at the foreign country's most exclusive restaurants and private clubs.
- What would you advise now?

1. Foreign Press Allegation Scenario

- The foreign-language press article has now been picked up and reported in *The New York Times* and *The Globe and Mail*.
- What would you advise now?

2. Gift Giving in China

- Your company is a medical device company. The company's sales team in China is licking its wounds after a slow year.
- "We've been embarrassed by competitors who have gained much success from giving lavish gifts, much more generous than ours."
- The team proposes to provide business acquaintances, including doctors and distributors, with "tokens of appreciation" during the two festival seasons, including mooncakes, vouchers, envelopes with cash, and watches.
- The team says that gift giving is a critical cultural practice in China and we must step it up this year if we want to succeed in this market.
- What would you advise?

3. Corruption Initiated by an Intermediary

- Your company is attempting to secure a contract to perform services for a state-owned oil company. An intermediary approaches your company and offers to supply sensitive information such as specifications on this and other public procurements. Your company engages this intermediary on a consulting contract. The information is indeed accurate and valuable, and your company ultimately wins the bid.
- Several months later, a rumor starts to circulate at your company that the intermediary bribed foreign public officials to obtain the confidential information and then approached potential bidders in the procurement process and sold this information to his preferred bidder.
- What would you advise?

4. Paying the Government's Agent

- Your company is the successful bidder for a significant services contract on an Indonesian infrastructure project. At the request of the foreign government, your company has agreed to pay the fees related to the government's marketing agent who has the exclusive ability to promote the project in question on behalf of the government. The promoter is entitled to three installment payments, coinciding with various milestone events in the project.
- On the eve of the third payment becoming due, you learn from another company that it too had bid on this services contract, although has never heard of this agent and had no dealings with that agent in the course of its bid on the project. This company has bid on other projects in Indonesia, and has never used or interacted with such a promoter, although the government's lawyer has assured you that this is a common business practice in Indonesia.
- What would you advise in this scenario?

5. Sponsoring the Hockey Team

- [Your company operates in a country that loves hockey.](#)
- The country manager has asked whether he can have approval to sponsor a customer's hockey team. The customer is a state-owned hospital.
- What would you advise in this scenario?

6. Shareholders

- Your company is transacting to acquire ABC Oil and Gas Corporation which has exploration and drilling operations in Nigeria. In the course of your company's due diligence of ABC, you note that several of the company's shareholders have names that sound Nigerian in origin.
- ABC refuses to give you any further information about the identity of the Nigerian shareholders.
- What do you advise in this scenario?

6. Shareholders

- Your subsequent due diligence reveals that two of the shareholders are spouses of Nigerian Public Officials.
- What would you advise in this scenario?

7. Termination

- A salesperson for your organization (Suzy Sales) has been terminated. She is demanding the payment of \$50,000 in commissions, which the company disputes are owing on the basis that another salesperson closed those deals.
- In a conversation with Human Resources, Suzy says that she has made an appointment with the FBI and that if she is not paid her commissions she will tell them about improper payments that were made by various salespersons in the organization to government officials in Russia and China, which assisted in securing sales with those foreign governments.
- Human Resources wants to pay the commissions in return for a release and confidentiality agreement that all information relating to customer contracts cannot be disclosed to anyone. The Chief Compliance Officer wants to refer the matter to the audit committee. The head of Human Resources is against a report to the audit committee, and has commented that paying the \$50,000 will be less expensive than hiring legal counsel in an investigation.
- What would you advise in this scenario, and how would you memorialize your decision?

8. Lease of the Company Apartment

- Your company is drilling for oil at a remote oil field located in Oman.
- Because housing options in the region are highly limited, the company has purchased an apartment near the oilfield to temporarily house its employees and contractors.
- Oman's Minister of Petroleum occasionally visits the region on Ministry business and knows that the company owns this property.
- He approaches the company with a proposal to rent the company-owned apartment for himself.
- What would you advise in this scenario?

9. Travel Expenses

- The company intends to work closely with a foreign state-owned oil company in developing a field that has historically presented significant technical challenges.
- The company was chosen for this project due to its advanced technical abilities and patented oil recovery technologies.
- The state-owned oil company requests that the company fly some of its engineers working on the project to Canada to tour its manufacturing facilities.
- What would you advise in this scenario?

9. Travel Expenses

- After giving approval for the engineers to make the trip, your subsequent inquiries reveal that the proposed attendees are in fact Ministry employees, and not technical personnel.
- What if the purpose of the trip was for the purpose of attending an oil and gas convention and exposition?
- What would you advise in this scenario?

10. Purchase of Land

- You are negotiating the purchase of land in a foreign country on behalf of your company. The foreign officials have made two verbal offers to sell you the land. The first is an offer to sell for \$60 million outright, the second is an offer to sell for \$49.7 million plus a \$300,000 “negotiation fee” for which they will not send you an invoice or confirm the fee in writing. Your company feels the land is worth \$55 million USD and needs the land to expand its operations and build facilities in that country.
- Can you accept the lower priced offer?
- What would you advise in this scenario?

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NOTE: Below are the ethics areas that we believe are compatible with session 204

Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 7.6 Political Contributions To Obtain Legal Engagements Or Appointments By Judges

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

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