



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

LEGAL COMPLIANCE FOR GLOBAL ORGANIZATIONS

AMERICAN CORPORATE COUNSEL ASSOCIATION
DELIVERING STRATEGIC SOLUTIONS
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LEGAL COMPLIANCE - OVERVIEW

- **Reasons for Compliance Program**

1. Increased Assurance of Compliance with Applicable Laws
2. Avoidance or Mitigation of Risk

3. Civil and Criminal Penalties, including under Federal Sentencing Guidelines

-Potentially severe consequences for companies and senior managers

-Possible debarment from government contracts

4. Publicity/Public Image

-Allegations or reporting can be damaging even if innocent

-Effect on customers or consumers

5. Consistency of Corporate Values

• **Steps Toward Effective Compliance Program**

1. Support/Buy-In from Executive and Senior Management

-Initial Indication of Priority is Critical (more than a letter)

-Ongoing Attention (Measurements; Financial Incentives)

2. Policy Adoption, Distribution and Acknowledgement

-Formal Board or other Management Approval (including subsidiaries)

-Dissemination throughout Company, with Modifications/Translations

-Importance of Employee Signature (necessary, not sufficient)

3. Corporate Code of Conduct

4. Communication/Application to Employees

5. Education and Training

a. Orientation Programs

b. Organized Live Programs

c. Internet and Electronic Programs

d. Written Communications (Newsletters, etc.)

6. Compliance Group or Officers

7. Employee Participation

a. "Teamwork" Approach

b. Surveys or Interviews for Monitoring Compliance

8. Compliance Documentation and Reports

9. Audits/Follow-through

- a. find problems before they become crises
 - b. coordination between financial auditors and compliance group
 - c. internal/external
10. Consistent and Prompt Enforcement
 11. Mechanism For Employee Reporting Without Fear Of Retribution
 12. Involvement of or Application to Third Parties

- **Key Problems Internationally**

1. Reporting Structures
2. Legal v. Virtual Entities (Operating groups differ from legal structure)
3. Communications Problems
4. Resources - Time/Management Attention
5. Language & Cultural Barriers
6. Conflicting Legal and Business Rules
7. Geography (The World is still a big place)
8. Potential for Surprises
9. Understanding the Rules
 - Good Local Advice
 - Different Advisors with Conflicting Opinions
10. Rapid Personnel Changes and Dislocations
11. Monitoring and Control
 - Conducting Internal Audits
 - Local Management Support
 - Resistance to HQ "here to help you"
12. Use of Special Consultants and Similar Third Parties

- **Substantive Legal Topics**

1. Local Laws
2. Labor and Employment Law
3. Antitrust/Competition Law

4. Anti-Bribery/FCPA
5. Export Controls and International Trade
6. Environmental, Health and Safety
7. Ethics
8. Government Procurement
9. Securities
10. Intellectual Property
11. Information Technology and "E" Business and Communications

COMPLIANCE WITH LOCAL LAWS

- **General Principles (Typical Problem Areas)**

1. Illegally Engaging In Business
2. Taxes
3. Immigration

I. ILLEGAL BUSINESS PRACTICES

A. PERMANENT ESTABLISHMENTS

1. Doing business on a sustained basis or at a particular site
2. Prescribed period of time
 - a. May be defined in tax treaty
 - b. May be defined in general business statutes
 - c. Typically 6 months
3. May be created inadvertently
 - a. Construction supervisors on site
 - b. Long-term sales or service efforts
4. To be legal may require special permit or license
5. May require local business entity
6. May require local participation, e.g., "Bumiputra Laws" in Malaysia

B. EFFECT OF ILLEGAL PERMANENT ESTABLISHMENT

1. Criminal violation (as in jail)
2. Deportation (and how do you now finish the job)
3. Additional or unanticipated taxes or penalties
4. Sudden "friendly" partner
5. Lawsuit from customer or competitor

C. OTHER ILLEGAL PRACTICES

1. Doing business in a forbidden area, e.g., Insurance, Banking, Retail sales and Services
2. Doing business without a permit or license
3. Doing business without registering
4. Failing to pay taxes
5. Doing business without required local participation

6. Exceeding authorized activities in a "Representative Office."

a. A company often begins activities in a new country by setting up a Representative Office. Typically these can be established quickly and with a minimum of red tape.

b. But, many countries limit the type of activities that can be carried out by a Rep Office; usually the office may only engage in sales activities on behalf of a foreign company.

c. For example, you cannot use the personnel in the office to perform maintenance or services activities, for example.

d. The rep office, since it is not technically a legal entity, cannot enter into contracts. (In one country, it is widely assumed that they will anyway and income taxes are nevertheless then imposed on the rep office.)

• **Keys to Compliance**

1. As always, make sure that business development and marketing staff keep counsel informed of new countries that you intend to do business in.
2. Contact good local counsel (not necessarily a local branch of a U.S. firm) and tell them what you want to do. Get their advice.
3. If it appears impossible, find out what your company's goals are and try to find a way to do it. In addition to local counsel, also find other business consultants, such as the local office of an international accounting firm.
4. In the countries in which you do business, establish a network of reliable local counsel. They can be very helpful, not only for you, but for your other employees that are on site. They can also fill needed functions such as providing resident directors or shareholders for local companies.
5. Check out your company's business plans. If it appears that permanent establishments may either be required or will result, then set them up properly.

6. This may mean that you have to create a business entity in the country.
 - a. A permit may be required for either partial, majority, or whole foreign ownership. These permits may be in addition to the normal incorporation regulations and tax registrations.
 - b. Plan ahead, it can take 6 to 9 months or more to get the necessary permits.
 - c. If it is feasible to use a local partner, find a reliable one.
7. If the permanent establishment is for a single project, explore alternatives to creating local business entities, such as registration of foreign firms, if permitted. This still may require tax registrations. (See Tax discussion below.)
8. Monitor the activities of your Representative Offices. Make sure that they are not engaging in illegal activities.

II. TAXES

A. LOCAL CORPORATE INCOME TAX

1. If your company has a permanent establishment, whether intentional or not, your company will in all likelihood be liable for local income tax.
2. Local income tax may be an offset against your home country income tax if there is a tax treaty with the home country and if the tax treaty so provides (and if your company is profitable enough to have a tax obligation in the home country).
3. Local tax laws are often not very clear and it may be difficult to predict the actual tax liability.
4. Often, the local corporate income tax may be prohibitive, e. g., as much as 40% of the total local revenue. That could put your activities into a loss position. However, such rates are usually reserved only for those companies that do not observe all the formalities of complying with local tax regulations.
5. In many cases, corporate income tax may be assessed as a withholding tax, and your customer is required to withhold the specified amounts from your invoices. Often this can be avoided by compliance with tax treaties that eliminate or reduce the withholding or by use of local business entities for on-shore services.

B. INDIVIDUAL INCOME TAX

1. This is the area that often seems to fall through the cracks. Employees are unaware of the tax requirement, don't pay it and you get assessed for it three years later after the employee has left the company.
2. Again this may be the subject of a tax treaty.
3. Some developing countries have higher tax rates for expatriates than for local citizens. (Surprise, surprise!)
4. Under typical tax treaties, the following persons may be subject to local income tax:
 - a. Foreigners who have local employment permits or passes or employment visas.
 - b. Foreigners who remain in the country for a specified period of time, e.g., 183 days in any calendar year.
 - c. Foreigners employed for any period of time by a permanent establishment.

5. While Americans are taxed by the U.S. on their global income, citizens of virtually all other countries may have little or no tax liability in their home country if they establish residence in a foreign country. Therefore, tax laws of the home country need to be checked when writing contracts for expatriate employment or when preparing policies for foreign work assignments.

6. For U.S. residents (both citizens and permanent residents), U.S. tax will continue to apply, but there are applicable exclusions and credits for foreign taxes paid. Be aware of the rules for the Section 911 exclusions that generally provide:

a. An exemption of \$70,000 per year (which may be pro-rated for partial years) provided that the taxpayer is a bona fide resident of a foreign country. The bona fide resident test may be met either of two ways:

1) The physical presence test — the taxpayer is not in the U.S. for 330 days in a 12-month period. Note that if the taxpayer is in the U.S. for any part of a calendar day, then it will count as one of the 35 permitted days.

2) The tax paying test — the taxpayer has been a resident of and paid income tax in a foreign country for an entire tax year.

b. A partial exemption for housing costs in the foreign country.

Also note that state income taxes may continue to apply to the expatriate if he or she continues to maintain significant contacts with his or her old home state. The above exclusions do not apply to state income taxes, so the taxpayer (or the company if you have agreed to tax equalization or tax protection in the contract) may get a large, unexpected tax bill. Some states have a "safe harbor" for avoiding state income tax in these situations. E. g, even a person deemed to be a resident of California is not liable for California state income tax if that person maintains a residence outside the U.S. for a continuous period of at least 18 months and is not physically present in California for more than 45 days in a year.

7. Most contracts or corporate policies should provide for tax equalization or protection for expatriate employees.

8. In addition to individual income taxes, some countries also impose an additional social tax on foreign workers.

C. BUSINESS OR SALES TAX

In many countries a business tax may not be passed on to the customer via contract. Remember that when pricing your project or goods.

D. VALUE ADDED TAX (VAT)

1. VAT differs from a sales tax in that it is added to each invoice or bill as goods and services travel up the line of supply. However, each registered VAT payer is usually entitled to a rebate or credit for the tax he paid to his suppliers. Therefore, the net tax paid is that collected from his customers less the tax he paid to his suppliers.

2. Obviously, it is only the final consumer then who winds up paying the whole 15 or 20% tax.

3. If you are doing business in a country that has a VAT you need to determine if you are the final consumer. Some countries allow foreign companies to register as VAT payers and then they are treated the same as any other domestic business. You will pay VAT to your suppliers and charge it to your customer. Then your net tax is only some fraction of the total.

4. In countries that allow registration of foreign concerns as a VAT payer, registration procedures may be complicated and time consuming.
5. If you have created a business entity in the country, remember that it may have to register separately as a VAT payer.
6. In some countries it may not be possible for a foreign entity to register as a VAT payer. In such cases, the full VAT on all supplies and possibly services within the country will be a cost to you.

E. CUSTOMS AND DUTIES

1. Often, these are unpredictable especially in developed countries that have very sophisticated systems of tariffs and duties.
2. Generally, duties are imposed on the importer of record. Therefore, if you have a construction project, for example, you may be the importer for equipment brought to the site and you may then be charged with the duty.

• Keys to Compliance

1. Again, a thorough assessment of all possible tax regimes in a particular country is essential.
2. Don't do it all yourself. Work with your finance department. Help them by citing the appropriate tax treaties.
3. Call on the local office of an international accounting firm with whom you have a relationship, and get their advice.
4. For a new country in which you plan to do a lot of work, prepare a tax guide in cooperation with your auditing firm or your tax department.
5. Work with your finance department to assess the likely tax position in the home country and the applicability of tax credits.
6. One technique that may help to limit local income tax is to divide the project into more than one contract. For example, for a project involving construction of a major facility, you could have three contracts — one for equipment, one for on-shore services, and one for offshore services. Under this procedure, only the on-shore service contract should be subject to the local income tax regime. It may be even better if the three contracts are written with different entities. Service work to be carried out on-shore may well be best carried out by a subsidiary set up in the country for that purpose or even by a local company that subcontracts the work to you.
7. Clearly, this all takes a lot of advance planning.
8. Despite all precautions, be ready to defend your positions when the other government decides to assess a lot more tax than you had budgeted. In one case, that I am aware of, there was general agreement by the audit firm, local tax counsel and a tax specialist that \$4 million was enough to budget for local corporate income tax. When the project was completed, the tax authorities assessed the contractor for \$13 million! (Fortunately, the amount proved to be negotiable.)
9. Well in advance of the dates that you expect to start work, apply for the needed permits and licenses.
10. If you think that the company hopes to do a lot of business in a country, or if the country does not permit

foreign companies to register to do business in the country, set up a local corporation. Remember, this can take a lot of time in some countries, especially where permits may be required for wholly foreign owned companies.

11. Alert expatriate employees of their potential tax obligations in both their home country and the foreign assignment. For U.S. residents, make sure that they are aware of the Section 911 exclusions and will qualify for them. Also make sure that they are aware of the need to file their U.S. income tax returns, although for foreign residents, there is an automatic extension of time to file. Perhaps include a provision in foreign assignment contracts that provides for the company to pick up the cost of preparing returns in both countries.

12. Because of the way the Section 911 exclusion tests are written, it usually means that the expatriate must limit his travel to the U.S. during the first 12 months of his or her assignment to a total of less than 35 days. Make them aware of the need to keep accurate records of their whereabouts, particularly during the first 12 months.

13. Encourage the expatriate American employees to investigate the potential for state income tax assessments in their old U.S. home and for others to be aware of the possible income tax requirements in their home countries.

14. It is highly recommended that all expatriate employment assignments be covered by written contracts that clearly specify tax obligations for both parties.

15. If VAT is an issue in a country, register as a VAT payer, if permitted.

16. If separate companies are used as contracting parties, make sure that the division of work complies with the tax purposes. At the same time, make sure that the separate prices for the work are reasonable. If the on-shore services contract, for example, has a ridiculously low price, or if the books or accounts show no profit to be taxed, the tax authorities may disregard the arrangement as a tax sham and assess the maximum withholding tax on the whole project price with an imputed rate of profit.

17. To minimize customs and duty problems, your contracts should provide that the domestic customer is the importer of record and that the price for equipment imported into the country does not include any customs or duties. Use of the proper shipping term, per Incoterms can help.

III. IMMIGRATION

This area is not usually a big problem. Almost everyone knows that if you are going to be in a country for a long period of time, you need a visa. Further, if you are going to work in the country, you need an employment visa. Obtaining these may take time and breaking through a lot of red tape. The greatest danger is that there may be a violation of immigration laws caused by an inadvertent permanent establishment, as discussed above. On one occasion, all of the employees of a particular well-known multinational were unceremoniously deported on 24 hours notice because some of the employees of their "representative office" were doing construction supervision, which was not an allowed activity. The authorities even took the dependent children out of school and escorted them home to pack!

Another example of an immigration problem is in Malaysia, in which there are no permit or license requirements for a foreigner or a foreign entity to own shares in a Malaysian corporation. In fact, you can buy a ready-made "off-the-shelf" corporation and change its name almost as readily as you can set up a corporation in Delaware. However, if you then apply for employment visas in the name of the new company that you just bought, you are asked if you have complied with the "Bumiputra" guidelines, requiring that Malays must have a controlling interest in business entities that are partially foreign owned. (Bumiputra literally means "people of the soil.")

LABOR AND EMPLOYMENT LAW COMPLIANCE

• General Legal Principles

1. Basis for Employment Relationship
 - a. Express Contract
 - b. Employee at Will
 - c. Union Representation
 - d. Restrictions on Freedom of Contract (e.g., Mandatory Arbitration)
2. Employees v. Independent Contractors
3. Liability of Employer to Third Parties for Acts of Employee
 - a. Agency Principles — Course and Scope of Employment
 - b. Statutory or Code Provisions on Liability
4. Immigration and Visa Requirements for Work Outside Home Country
 - a. Duration of Stay
 - b. Visa Types
 - c. Tax Issues
5. Discrimination - Basic U. S. Rule: cannot base hiring, firing or other employment decisions on a person's race, color, gender, religion, national origin, ancestry, age, medical condition, marital status, disability, or veteran status
6. Liability for Sexual (or Other) Harassment
7. Whistleblowers
 - a. Handling Claims
 - b. Protection against Reprisals

• Keys to Compliance

1. Understanding Applicable Laws and Requirements
2. Tailor Approach to Local Requirements; Maximize Consistency with Global Approach
3. Competent Human Resources Personnel

4. Training of Managers and Employees
5. Responding to Complaints or Warning Signs — Prompt Remedial Action
6. Proper Documentation
 - a. Policies, Processes and Procedures
 - b. Agreements
 - c. Responses
7. Strong Doses of Common Sense

- **Specific Problem Areas for Global Companies**

1. Application of U.S. Discrimination and Harassment Policies
 - a. Overseas Locations
 - b. Expatriates or Visitors from Other Countries to U.S.
2. Mobile Work Force — Especially Service and Project Companies
 - a. Timing
 - b. Visa and Permit Requirements
 - c. Tax Filings
3. Reconciling Legal and Cultural Differences — Examples:
 - a. Non-Discrimination against Women in Saudi Arabian affiliate
 - b. Lack of Employment Contracts for U.S. Subsidiaries of European-based Companies
4. Electronic Mail and Internet Security Issues
5. Decisionmaking by Managers with Global Responsibilities
 - a. Assurance that act only for Employing Company
 - b. Negotiation and Signing of Contracts
 - c. Potential Tax, Jurisdictional and "Piercing the Veil" Issues

ANTITRUST OR COMPETITION LAW COMPLIANCE

- **Major Problem Areas**

- A. Mergers, Acquisitions and Joint Ventures
- B. Abuse of Dominant Position (Monopoly)
- C. Price-fixing

D. Territorial or Customer Allocations

E. Boycotts

F. Tying Arrangements

G. Output Control

• Sources of Legal Control

A. U.S. Antitrust Laws (Sherman Act, Clayton Act, Hart-Scott-Rodino Act)

1. Extraterritorial application of the U.S. laws.
2. Penalties include fines and prison and forced demergers.
3. Enforcement by either Department of Justice or Federal Trade Commission.

B. European Union, Treaty of Rome and Implementing Regulations

1. Extraterritorial application if there is an anticompetitive effect within the Union.
2. Penalties are fines or demergers — no prison.

1. Enforcement by European Commission in Brussels
2. Application to mergers if affecting more than 1 EU member; otherwise look to law of single country involved

A. Other Countries

1. Many other countries have antitrust laws, including developing nations
2. Brazil (CADE) has broad powers and is active on its own and upon complaints from businesses. Merger notification required at unusually low worldwide thresholds if affecting Brazilian commerce. Does not require that either party actually makes sales in Brazil.
3. Australia, Canada and Japan among developed nations each have competition laws that must be considered if substantial undertakings in those countries.

• Compliance Practice

A. Mergers and Acquisitions

1. Pre-Merger Notification Requirements:

- a. In the U.S., Hart-Scott-Rodino requires notification if certain criteria relating to the sizes of the parties and the size of the merged unit are met. The waiting period for approval is 30 days, but may be extended if additional information is required.
- b. In Europe, the EC Merger Regulation requires prior notice if criteria relating to the EU dimension of the merger are met.
- c. In either case, the relevant enforcement authorities may request information in addition to that submitted with the applications and may request comments from competitors, suppliers and customers. The authorities may also make approval contingent upon certain undertakings by the merged entity such as disposal of a portion of the merged assets.

2. Analysis of whether or not notice is required may be difficult. Competent antitrust and competition law specialists should be consulted. Frequently, the analysis (and ultimate approval) may depend on characterization of the relevant markets. This may require the accumulation of a great deal of data on the markets in issue.
3. Ultimate approval is generally based on the assumption that the merged entity will not result in a dominant market position through concentration of market power, whether as a monopoly or an oligopoly.
4. Anti-monopolization laws of other countries may also need to be consulted. For example, even if the EU Merger Control regulations do not apply, there may be a significant market effect within one or more of the EU member nations that could require approval by the merger control authorities in that nation, such as the German *Kartellamt*.
5. In conjunction with analysis by good antitrust counsel, some preliminary thought should be given to the possibility of required undertakings such as partial divestments.

B. Violations of the Law Other Than through Merger or Acquisition

1. Training, training, and more training is the best way to avoid problems in this area. Use of films (some of them very scary) and seminars, especially for sales staff and marketers can be useful.
2. Brochures with summaries of prohibited practices.
3. Corporate policies in these areas are a must.
4. Highlighting areas of risk:
 - a. Avoidance of tacit agreements with competitors.
 - b. Bid-rigging.
 - c. Price fixing. Review terms and conditions of sales agreements to insure that vertical price-fixing is not inadvertently being used. Do not permit termination of retail customers for violations of formal or informal resale price maintenance policies.
 - d. Allocation of markets, either territorially or by customers, with your competitors.
 - e. Restrictions on competition by quantity, quality or technical standards.
 - f. Boycotts.
5. Highlight Risk Opportunities
 - a. Fairs, trade shows, etc. These often present great opportunities to do something illegal. Advise your participants particularly to be careful during social sessions to avoid discussing sensitive topics like bidding and prices.
 - b. Trade and professional organizations. These present a risk of inferred violation of the above matters. Advise participants particularly to avoid "rump" sessions at meetings of these kinds of organizations.
6. Careful legal reviews of certain types of agreements, such as wholesale sales agreements, distributor agreements, license agreements. Encourage use of standard forms. Checklist of potential problem areas:

Resale price maintenance.

Import and export restrictions.

Exclusivity requirements.

Boycott.

Tying arrangements.

Price discrimination.

Exclusive purchasing requirements.

7. Review special rules applicable to licensing of technology.

a. U.S. authorities generally view technology licensing to be pro-competitive, but some restrictions may go beyond the rules. Particularly avoid restrictions on licenses of patents that extend beyond the period of the life of the patent.

b. The EU regulations, however, are more restrictive in two sensitive areas: (i) exclusive licenses and (ii) allocation of licensed territories. The regulations include a "white list" of approved terms and a "black list" of prohibited terms. Any license agreements involving EU countries or having an effect on the EU should be reviewed carefully. Exceptions are available and no-action letters may be sought under certain circumstances.

ANTI-BRIBERY LAW COMPLIANCE

• General Legal Principles

1. Foreign Corrupt Practices Act

a. Enacted 1977, amended 1988 and 1998

b. Principal components:

- Accounting standards
- Anti-bribery

c. Accounting standards provisions of the FCPA apply to publicly traded companies and their majority owned subsidiaries.

- covers U.S. and foreign subsidiaries
- 50% or less ownership - still a good faith requirement to comply
- Requires detailed and accurate records of all payments and transactions and an internal control system that provides "reasonable assurances" that management controls the use of its business assets

d. Anti-bribery provisions of the FCPA apply to:

- issuers and domestic concerns acting within or outside the United States

- covers essentially all U.S. individuals and U.S. business concerns (including their U.S. and foreign directors, officers, agents and employees)

- foreign individuals and business concerns acting within the United States

e. Elements of an offense under the anti-bribery provisions:

- corrupt motive
- use of mails or any means of interstate commerce
- in furtherance of an offer, payment, promise or authorization of any money, gift or anything of value
- to (i) any foreign official, (ii) any foreign political party, (iii) any candidate for foreign political office, (iv) officers or employees of public international organizations, or (v) any third party while "knowing" that the payment or promise to pay will be passed on to one of the above
- influencing official act or decision, inducing an act or omission in violation of official duty, or inducing use or influence to affect acts or decisions of a government or instrumentality
- for the purpose of obtaining or retaining business or securing any improper advantage

f. Definition of "knowing" under the anti-bribery provisions includes

- Actual knowledge
- Firm belief that a circumstance exists or that a result is substantially certain to occur
- Awareness of a high probability

g. Permitted payments under the FCPA

- Facilitating or expediting payments to secure routine governmental action are permitted under the FCPA

- Foreign law may prohibit facilitating payments

- Facilitating payments will not be permitted under the FCPA to influence any decision by a foreign official whether, or on what terms, to award new business or to continue business with a particular party

- Payments which are lawful under written laws and regulations of host country
- Payment of reasonable and customary travel and lodging expenses

- Foreign law may also regulate such payments

h. Penalties

- Individual - fines up to \$100,000 and up to 5 years imprisonment per violation
- Corporate - \$2 million fine per violation
- Loss of government licenses, e.g., ITARs
- Suspension or debarment
- Possible SEC disclosure requirement
- Business disruption and adverse publicity

1. Foreign anti-bribery laws (Note that some of these focus on the public officials rather than the companies)

2. Multilateral Developments

a. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (incorporated into FCPA)

b. Council of Europe's Civil Law Convention on Corruption

c. OAS Inter-American Convention Against Corruption

• Keys to Compliance

1. Establish written internal compliance policies applicable corporate-wide, including international operations.

- a. Requirements for identification, assessment, retention and management of international consultants and agents
 - Due diligence and disclosure of material facts (including use of independent references)
 - Legal opinion, including assessment of local law issues
 - Management approval requirements
 - Requirements of written agreement with international consultant or agent
 - Management certifications
 - Certifications from any international agent or consultant
- a. Assignment of responsibilities
- b. Limits of authority on international transactions
- c. Rules of engagement
- d. Assure adequacy of financial reporting and internal control systems
- e. Periodic review and update
- f. Employee sanctions for violations

1. Consistent application of corporate policies

2. Adequate training

- a. familiarity with general legal principles
- b. recognize red flags
- c. how to respond to a red flag situation
- d. do not put your head in the sand
- e. do not implicitly or expressly authorize

1. Investigation of possible corruption

2. FCPA opinion procedure

3. Collective knowledge and authorization in corporations

• Specific Problem Areas for Global Companies

1. Doing business with corrupt countries or with corrupt customers
2. Transparency versus competitiveness
3. Excessive contingent fees as a red flag of corruption
4. Gifts and entertainment
5. Facilitating payments — U.S. law versus local law
6. Investigations
7. How to respond to mudslinging
8. Corruption issues in ownership and management of foreign companies
9. Termination of sales agents
10. Corruption issues in offset transactions
11. Conflict of interest and revolving door issues
12. Post contract services, unauthorized sub-agents and other questionable arrangements
13. International joint ventures, agencies and other arrangements with foreign officials or government entities

14. The relative issue

EXPORT CONTROLS AND INTERNATIONAL TRADE**(Primary Focus on United States Law)**

- **General Legal Principles/Areas**

1. Exports Regulated by Department of Commerce, State and Treasury. Principal Statutes and Regulations are a "hodge-podge"—Export Administration Act of 1979 (expired in 1994 but kept alive by International Emergency Economic Powers Act and Executive Orders) and Regulations (EAR); Arms Control Export Act and International Traffic in Arms Regulations (ITAR); and Trading with the Enemy Act of 1917 and Office of Foreign Asset Controls (OFAC) Regulations.
2. Commodities, Technology and Software are each regulated
3. Controls are by Item, Customer/Recipient, Use and Destination. Sensitivity to military uses and to destinations such as Syria, China, North Korea, as well as those listed in 6. below.
4. Commerce Control List (CCL) categorizes controlled Items according to Export Control Classification Number (ECCN) and specifies when a license is necessary.
5. Deemed Exports — Disclosure of Technology to foreign national by plant visit, access to drawings and technical information, etc. Can occur in the employment context.
6. Foreign Asset Controls and other executive actions broadly prohibit trading with certain countries (one less now that North Korea removed by Executive Order). Remaining countries with broad prohibitions are Iraq, Iran, Cuba (liberalization on the horizon), Sudan, Serbia, Libya and Afghanistan (Taliban).
7. Various lists of persons to whom/which exports are prohibited are published and updated by government agencies from time to time. These lists include foreign terrorist organizations, specially designated nationals, and foreign narcotics kingpins.
8. Antiboycott Regulations — Boycotts primarily aimed at Israel by Muslim countries. Prohibition against furnishing any business or personal information in furtherance of boycott such as whether products are of Israeli origin; whether company does business with Israel; or whether company does business with anyone on blacklist. Requires reporting of any request, and compliance with boycott is forbidden. Positive certifications of origin (e.g., goods are of [country] origin are acceptable). Now mostly a trap for the unwary because many major Muslim nations either no longer participate or have ceased boycott enforcement.
9. Export Reporting — Shippers' Export Declarations (SED's) or Automated Export System (AES) reporting required for all exports under same ECCN in excess of \$2500. Enforced by U.S. Customs Service. Accurate information must be supplied by exporter. Enforcement increasing because of Census Bureau concern about accuracy of trade data, and export (and import) smuggling of drugs, controlled items, stolen goods and other contraband.
10. NAFTA —Exports of U.S.—origin goods to Mexico and Canada are generally free of duty, provide the product meets the applicable NAFTA Rule of Origin. Product by Product certification to be conducted periodically (at least annually). Applies to trade among all 3 members.
11. Consequences of Violations —
 - Fines
 - Adverse publicity
 - Government Monitoring
 - Imprisonment
 - Loss of Export Privileges

- **Keys to Compliance**

1. Train Customer Service (order handling) staff

2. Know your customer; be on the alert for re-exports to prohibited destinations
3. Include clauses re Export Controls in Distribution Agreements and unlawful diversion of products in export documents
4. Ensure proper classification by maintaining product databases -- have expert assistance to call upon for classifying technically complex products
5. Build rapport with government agencies. Know who to call for informal advice.
6. Do not overlook "nontraditional exports" (internet, personal delivery, courier, informational disclosures)
7. Control the export so that you or your agent prepare the export documentation where practicable. New regulations from BXA require written agreement in order to transfer responsibility for export compliance to foreign customer where U.S. seller delivers to customer's agent in the U.S. (routed export transaction). If no agreement, the U.S. party will be responsible for export compliance, although it does not control the export process. Even with agreement, if the foreign customer's agent is not knowledgeable in this area, the U.S. party will be at risk.
8. Control visits of foreign nationals from target countries (including China) to sensitive sites
9. Maintain worldwide network of compliance contacts at subsidiaries and key distributors
10. Assure access of all distribution locations to the latest List of Denied Persons
11. Perform due diligence on export control compliance when making acquisitions and entering into joint ventures

- **Specific Problem Areas for Global Companies**

1. Conflicting Laws between U.S. and other nations (Example: Cuba, where the U.S. controls are unilateral)
2. Re-exports
3. Dual Use Products
4. Cutbacks in administrative staff (headcount reductions provide more opportunities for error)
5. Multiple export locations
6. Perception that no one will find out
7. Relative level of complexity
8. Rapid development of new products, software and technology
9. Training new employees (especially in remote locations) and keeping them up-to-date
10. Acquisitions and Divestitures (you may inherit someone's problems or you may find out you have a problem in a divestiture)
11. Changes in source of supply may disqualify products for duty free treatment under NAFTA
12. Restrictions on exports (especially technology) within a corporate group may be overlooked

ENVIRONMENTAL LAW COMPLIANCE

- **General Legal Principles/Areas**

1. Required Environmental Permits
2. Liability for Air, Water and Land Pollution/Contamination
3. Hazardous and Solid Waste Management
4. Releases of Hazardous or Toxic Substances
5. Occupational Safety and Health
6. Disclosure and Reporting Requirements

- **Keys to Compliance**

1. Analysis of Product and Operational Issues, including facility specific issues
2. Training and General Awareness Programs - consequences of non compliance
3. Understanding and Complying with Permit Requirements
4. Understanding of and Relationships with Enforcement Authorities
 - approaches may differ
 - some items may be negotiable
5. Policies and Procedures
6. Ensuring Availability of Necessary Resources, including Monitoring and Emergency Equipment and Technicians
7. Inspections and Audits - Prompt Corrective Action
8. Documentation and Record-Keeping
9. Careful Qualification and Monitoring of Environmental Contractors, including Disposal Sites

- **Specific Problem Areas for Global Companies**

1. Consistent Application of Policies in Evolving Legal Framework
2. Education of All Employees
3. Monitoring Compliance in Dispersed Locations
4. Conducting Appropriate Due Diligence including Site Assessments
5. Increasing application of "U.S. type" environmental/safety laws/policies
6. Fear of "Bophal" type issues

"Ugly American" tag

Lawsuits in U.S. courts for environmental catastrophes — and use of U.S. standards to show negligent or reckless conduct

7. Precipitous government/police reactions on local management following compliance incidents
8. Reconciling Local Practices with Corporate Rules
 - safety shoes, hearing aids, hardhats, etc. in certain countries
9. Lack of mature infrastructure (e.g., disposal facilities) to support compliance
10. Differential enforcement (multinationals held to higher standard)

ETHICS

- **General Legal Principles (keeping in mind that Ethics cannot be legislated)**

1. Code of Ethics (Business Conduct Guide) — Sample Attached

Form of Adoption

Availability for Reference

Enforceability

Updates

Employee Representative Organizations

Coverage

Corporate Policies

2. Substantive Areas

Conflicts of Interest (Supplier/Customer Relations)

Use of Company Assets (including intellectual property)

Confidential Information/Insider Trading

Reporting Integrity (no cover-ups or distortions)

Following Policies and Procedures

Government Relations

Respect for Rights of Others

Competition Law

Compliance with Laws

3. Investigations and Audits

Privilege (probably limited outside U.S.)

Use of Lawyers

E-mail

4. Third Party Suits against Company

5. Consequence of Violations to Employee

Discharge for Cause/Resignation/Discharge without Cause

Disciplinary Action Short of Discharge

Criminal Actions

Restitution

Loss of Face

Third Party Suits

6. Disclosure Mechanisms — Protection against retaliation

• **Keys to Compliance**

1. Understanding Applicable Laws and Requirements

2. Management by Example

3. Accurate and Sensible Translations of Conduct Guides (avoid literal translations that do not make sense in local language — let local lawyers review the translation before publication)

4. Training of Managers and Employees at the Local Level

5. Responding to Complaints or Warning Signs — Prompt Remedial Action

6. Regular Monitoring

7. Office of Ombuds

8. Easy Availability of Information for Employees and Managers

• **Specific Problem Areas for Global Companies**

1. Cultural Differences

Examples: - Gifts in Japan and elsewhere in Asia

- Close personal and family ties in Latin America (see 2. below)

2. Close Personal Relationships formed between Marketing and Sales Managers and Customers; between Purchasing Managers and Suppliers

3. Distance from Headquarters

4. Reductions in "Staff Units" — Less Oversight

5. Management Encourages Greater Risk Taking

6. Electronic Messaging Pitfalls

7. Virtual Corporations/Joint Ventures and Alliances

ATTACHMENT

BUSINESS

CONDUCT

Guide

for
Employees
of

[Name of Kodak Company operating outside the USA]

To: All Employees of [name of Kodak company operating outside the United States]:

The reputation of the Kodak group of companies and the Kodak brand has been built by more than a century of honest and ethical business conduct. Our reputation has more than symbolic value. It has provided each Kodak company with a competitive advantage.

For some time now, you have been hearing about corporate values: respect for the dignity of the individual, uncompromising integrity, trust, credibility, and continuous improvement and personal renewal. The ability of every employee of a Kodak company to live those values on a daily basis is important to the reputation and future success of the Kodak group.

The Business Conduct Guide defines ethical behavior—the behavior consistent with our corporate values—in various situations. Please review these guidelines, and keep them for future reference. If you have any questions, use the appropriate channels in your company to discuss your issues.

Depending on your job, you may be asked periodically to sign a letter stating that you understand and comply with these guidelines.

I appreciate your continued efforts to deal fairly and ethically with all others, both inside and outside Kodak, as we strive to satisfy our customers and grow our business.

George M. C. Fisher

Chairman, CEO

Eastman Kodak Company

INTRODUCTION

The Kodak group has a proud heritage and enjoys an excellent reputation. Each employee of the company is a representative whose actions reflect not only upon the employee but also upon the group, the company and other employees. Employees must maintain the highest ethical standards in the conduct of business so that they, the company and the group are always above reproach.

Each employee is responsible for conducting company business with integrity, and for complying with all applicable laws. This includes:

- 1) Avoiding situations where personal interests are, or appear to be, in conflict with company interests.
2. Safeguarding and properly using company and group assets, including maintaining confidentiality of nonpublic information and not acting on such information for personal gain.
3. Being truthful and accurate in all communications, records, and reporting.
4. Treating all customers and suppliers in an honest and fair manner.
- 5) Handling relationships with public officials, employees of international organizations and governments, and political candidates within the spirit as well as the letter of the law.

6) Respecting the rights of others.

Employees should also read and be familiar with the Statements of Corporate Policy. These are available from [Human Resources].

[This Guide does not override the specific provisions of any labor contract or specific legal rights granted to employees under applicable law.]

C O N F L I C T S O F I N T E R E S T

Employees should avoid any situation that may involve a conflict between their personal interests and the interests of the company. In dealing with current or potential customers, suppliers, contractors, and competitors, employees should act in the best interest of the company and not seek personal gain.

Each employee should make prompt and full disclosure in writing to management of any situation which may involve a conflict of interest, so that the situation can be discussed and resolved. Questions about the applicability of the conflict of interest policy should be addressed to management.

Examples of conflicts of interest are:

- Ownership by an employee of a material financial interest in any outside enterprise which does or seeks to do business with, or is a competitor of, the company.
- Serving an outside enterprise which does or seeks to do business with, or is a competitor of, the company. This includes, for example, serving as a director, employee, officer, partner, or consultant.
- Acting as a broker, finder, or intermediary for the benefit of a third party in transactions involving the company or its interests.
- Incurring significant indebtedness to any concern whose business may be affected by the employee's actions on behalf of the company.

The company does not require the members of an employee's household to limit their employment or other interests in accordance with this policy. However, the company requires that an employee disclose to management any possible conflict of interest involving a member of the employee's household. Very often, such conflicts of interest involving household members are resolved by such disclosure. The company will however take appropriate action in the best interests of the company regarding the employee in the case where there is a conflict of interest that is not acceptable to the company.

U S E O F A S S E T S

Proper use of company and group assets, including proprietary information, is a fundamental responsibility of each employee. Employees must comply with security programs to safeguard assets against unauthorized use or removal, as well as against loss by criminal act or breach of trust.

Proper Use of Company Property

The removal from company facilities of company property is prohibited unless authorized. This applies to furnishings, equipment and supplies, as well as property created or obtained by the company for its exclusive use—such as customer lists, files, personnel information, reference materials and reports, computer software, data processing systems and databases. Neither originals nor copies may be removed from company premises or used for purposes other than company business without prior written authorization.

Contributions made by any employee to the development of company products and services are generally company property and remain company property even if the individual's employment terminates. [Where local law provides that an employee has rights to such contributions, appropriate arrangements have been made to acquire such rights from the employee.]

Each employee has an obligation to use productively the time for which he/she receives compensation from the company. Work hours should be devoted to activities directly related to the company's business, except for non-business activities authorized by the employee's supervisor.

Company information resources such as E-mail and the Internet connection are to be used for business purposes only, and are not for personal use.

Confidential Information/Insider Trading

The company provides employees with confidential information with the understanding that it is to be held in confidence and not communicated to anyone not authorized to see it. The type of information that employees must safeguard includes (but is not limited to) unannounced products, product formulae, manufacturing processes, sales data, significant projects, customer lists, and sensitive financial information, whether in electronic or hard-copy format. As worldwide competition becomes more intense, it is increasingly important that employees safeguard company ideas and information. These are costly, valuable resources developed by employees for the exclusive benefit of the group.

Nonpublic information obtained as a result of company employment may not be used for personal gain. It is a violation of company policy for an employee to trade in Kodak stock on the basis of material* nonpublic information or to transmit material, nonpublic information to another person who may trade, or advise others to trade, Kodak stock on the basis of such information. It is also a violation to use such information (a) to trade or cause others to trade in securities of any other company, or (b) to acquire or help others acquire a property interest of any kind, including real estate. Misuse of material, nonpublic information can result in personal fines and imprisonment in the United States of America and possibly other countries.

* Information is "material" if a reasonable investor would consider it important in determining whether to buy, sell, or hold the stock in question. Information is "nonpublic" until it has been disseminated generally to the public.

Reporting Integrity

All financial reports, accounting records, research reports, sales reports, expense accounts, time sheets and other documents must accurately and clearly represent the relevant facts or the true nature of a transaction. Improper or inaccurate accounting, documentation or financial reporting are contrary to company policy and may also be in violation of applicable laws. Intentional accounting misclassifications (e.g., expense versus capital) and improper acceleration or deferral of expenses or revenues are examples of unacceptable accounting/financial reporting practices.

No payment on behalf of a company shall be made or approved with the understanding that it will be used for something other than the stated business purpose.

The same high standards of integrity required in company financial reporting to shareholders, creditors, government entities and others outside the company also apply to internal reports.

Responsibility for compliance with these principles rests with all employees, not solely with the company's

accounting personnel. All employees involved in approving transactions, supplying documentation for transactions and determining account classifications are responsible for complying with these standards and, where appropriate, generally accepted accounting principles.

Internal Controls

The group maintains a system of internal controls to provide reasonable assurance that:

- a) transactions are executed in accordance with management's authorization, and are properly recorded and posted;
- b) company assets are safeguarded from waste, fraud, and abuse;
- c) legal requirements are satisfied; and
- d) company resources are used in an efficient and effective manner.

The system of internal controls within the group includes written policies and procedures, budgetary controls, supervisory review and monitoring, and various other checks and balances, and safeguards such as password protection to access computer systems.

CUSTOMER AND SUPPLIER RELATIONSHIPS

Bribes and Payoffs

Offering, giving, soliciting, or receiving any form of bribe or payoff is prohibited.

Employees who are requested to provide any form of bribe or who are subject to some form of extortion must report the request to a sufficiently high level of management to enable the company to take appropriate action to protect the company and the employee.

Giving and Receiving Gifts

The group does not seek to gain any advantage through the improper use of gifts or other inducements. Good judgment and moderation must be exercised to avoid misinterpretation and adverse effect on the reputation of the group or its employees.

Gifts means anything of value, including meals, entertainment and services.

Giving Gifts

Gifts may be given to customers and suppliers if what is given:

- is consistent with customary business practice;
- is not excessive in value and cannot be construed as a bribe or pay-off;
- is not in violation of applicable law or ethical standards; and
- will not embarrass the company or the employee if publicly disclosed.

Receiving Gifts

Gifts of more than token value, or offered at less than market value, may not be accepted by an employee

from any person or organization that does or seeks to do business with, or is a competitor of, the company, unless a company officer or his/her delegate approves its acceptance by the employee; if not approved, the gift must be returned, paid for by the employee, or turned over to the company and the donor so advised.

Employees within the [Purchasing Organization] of the company may not receive any form of gift at any time, except with the advance consent of management of the group Purchasing Organization.

It is never acceptable to receive a gift in cash or a cash equivalent.

For his or her own protection, an employee dealing with a customer or supplier should advise the customer or supplier of this company policy at the outset of the relationship, preferably in writing.

Gifts from a customer or supplier to a member of an employee's household will be considered by the company as gifts to the employee.

Competition and Dealings with Competitors

It is group policy to comply with all provisions of competition laws. An area of particular concern involves agreements and discussions with competitors. For example, employees should not participate in any discussion, understanding, agreement, plan, or scheme—whether formal or informal—with any competitor or potential competitor, which involves prices, price levels, territories, or customers to be served.

The criminal penalties imposed by courts in relation to competition matters are severe in terms both of imprisonment and fines, and they may be imposed both on employees and employers.

GOVERNMENT RELATIONS

Employees must adhere to the highest standards of ethical conduct in all relationships with international organization and government employees and must not improperly attempt to influence the actions of any public official.

Government Procurement of Kodak Products

Many governments have adopted comprehensive laws and regulations governing their purchases of products from private contractors. Many of these laws and regulations are intended to assure that governmental entities receive prices at least as good as the company's best price to a commercial customer and that there is full and open competition in contracting.

When selling products to government procurement agencies, employees are accountable for complying with all applicable procurement laws, regulations and requirements. Certifications to, and contracts with, government agencies are to be signed by the appropriate company officer or other employee properly authorized to sign such documents, based upon knowledge that all requirements have been fully satisfied.

Payments or Gifts to Officials

Payments or gifts shall not be made directly or indirectly to any government official or employee (including any officer or agent of any public international organization), if the gift or payment is illegal under the laws of the country having jurisdiction over the transaction, or if it is illegal under United States law.

Because of the complexity of the laws in this area, all proposed gift giving to such persons for legitimate business purposes must be cleared with a company legal advisor in advance.

Political Contributions

The Kodak group maintains a non-partisan political position, that is, it takes positions on issues and is prepared to support financially candidates, parties or organizations regardless of party affiliation, whose philosophies or positions on issues are consistent with the company's business goals and objectives.

Outside the United States, political contributions to candidates or parties or organizations meeting the above test must be (i) permitted by law and (ii) approved in advance by Eastman Kodak Company management. Contributions can be made to support candidates seeking election, public referenda and ballot initiatives, events sponsored by political parties or political organizations, and voter education and registration activities. However, United States law prohibits certain payments, so any proposed payment must be cleared in advance by the Legal Division of Eastman Kodak Company.

No direct or indirect pressure in any form is to be applied toward anyone (including employees) to make any political contribution or participate in the support of a specific political party or the political candidacy of any individual.

Employees are encouraged to participate in the political process by becoming informed voters and by contributing their own time and money to the candidates and issues of their own choice.

R I G H T S O F O T H E R S

Fair Treatment of Employees

Each employee is entitled to be treated with dignity, fairness and respect by supervisors and other employees. The company maintains a zero tolerance policy for harassment or intimidation, which means that harassment or intimidation because of race, color, religion, sex, sexual orientation or age is prohibited. Any employee who violates this policy will be subject to discipline, up to and including termination of employment.

Health, Safety and the Environment

All group facilities worldwide operate under the basic principle that health, safety and environmental responsibilities are fundamental to Kodak values.

Employees of the company are responsible for ensuring compliance with all provisions of health, safety and environmental laws.

The penalties that can be imposed against companies and employees for failure to comply with health, safety and environmental laws can be substantial, and include imprisonment and fines.

Copyrights and Software

Employees must respect the valid copyrights of others, in works as diverse as printed materials, films, sound and video recordings, art items, computer software in any media, as well as translations and adaptations of such works.

Copyrighted works of others are not to be incorporated in Kodak works, duplicated, or distributed by employees, until permission is obtained. This includes work in electronic as well as hard-copy format.

Software used by employees for company business must be covered by a license from the owner of the software.

C O M P L I A N C E

All employees benefit from an atmosphere of ethical conduct. As a general condition of employment,

employees are expected to comply with company standards of business conduct and underlying policies and procedures. Violations of company business conduct standards are grounds for disciplinary action up to and including discharge and legal prosecution. [**] When in doubt, employees must seek clarification from management or, if necessary, from a company legal advisor.

[**The specific provisions of an individual labor contract or a collective labor contract may expressly or impliedly exclude these conditions or responsibilities. In such cases, the provisions of the labor contract govern.]

Employees who suspect misconduct, fraud, waste of company assets, or other violations of company business conduct standards are responsible for reporting such matters in confidence to management or, if they prefer, to a member of local auditing management or a company legal advisor. The Office of the Ombuds or the Office of the General Counsel of Eastman Kodak Company can also be used to raise issues of concern.

Kodak's policy prohibits retaliation against an employee acting in good faith who reports information or raises questions about possible violations of law or company policy.

CASE STUDY 1

Gajetz Corporation is a publicly traded U.S. company based in Chicago and sells electronic equipment worldwide. Three years ago it acquired a French company called Electricite de Gambai (EDG). EDG has its own line of products, but has also become a distributor for Gajetz products since the acquisition.

Barry Bellows has practiced internationally for Gajetz for several years, and has recently taken the new position of Director of Legal Affairs, European Operations. Bellows may eventually be asked to relocate to Europe. Gajetz General Counsel has asked him on a priority basis to get to know EDG management and their operations. The GC is concerned that EDG has become too independent of standard Gajetz practices. He has also recently received an anonymous letter alleging that EDG has paid bribes and engaged in other questionable practice, and that its General Manager seems to be making personal profit from EDG activities, based on his lifestyle.

Bellows sets up a meeting with EDG's General Manager at EDG's Paris headquarters to discuss the letter and provide an overview of EDG's operations. He asks the GM about the allegations in the letter. The GM provides the following information over dinner, the night before their meeting:

1. He admits that some payments were made to obtain business from a customer in the Ukraine (LGE) in connection with entering some new distribution and licensing arrangements in 1999. The GM states that such payments are common practice in Europe and were then fully permitted under French law. Further, this was an important transaction because EDG got a license to use some important LGE electronics technology. He denies having received any kickbacks or any other improper compensation. He recently bought a new Mercedes after trading in some Gajetz stock and cashing in some stock options with impeccable timing.
2. EDG has entered into a letter of intent to acquire LGE, now that it has been fully privatized by the Ukrainian government. The matter is being handled by EDG's long-standing counsel at a local law firm. The GM expects the competition filing to be made with the EC shortly. The GM's biggest concern relates to labor issues: (a) EDG's union worries that the acquisition may result in lost French jobs; and (b) LGE has too many workers, and its union may resist any cutbacks.
3. EDG's branches in the Middle East have been very successful. Certain projects there have afforded EDG the accounting flexibility to provide sales figures which meet Gajetz's aggressive financial targets. A key customer in Iran is very happy that it again has access to U.S. electronic products through EDG, and that

EDG will be able to certify that it will not use carriers that call upon Israeli ports. He has recently sent a detailed country report to the Gajetz division marketing and accounting directors.

Bellows tells the GM that this information raises various problems. He will need to ponder their next steps. Back in his hotel room, he tries to identify all the issues before communicating with his GC.

CASE STUDY 2

COMSOX, a small niche projects company, expanded aggressively into China during the mid-1990s. Based on the advice of its local consultant based in Hong Kong, You Mi, COMSOX sent a U.S. — based project manager on an approximately 6-month assignment to help set up its China operations. COMSOX formed representative offices in Beijing, Shanghai and Shenzhen, run by Chinese nationals. Much of the work of setting up the offices was handled by You Mi and his firm, because "he knew China" and all the necessary government officials. You Mi frequently met representatives of COMSOX at their hotel. On his business card, his address is listed as a post office box in Hong Kong. His fees (\$10,000 per month) were paid by wire transfer to a bank account in the Cayman Islands.

COMSOX projects required persons from the United States to go to China for varying periods of time to perform or direct work on its projects. These persons delivered software code on diskettes to their local offices for use in connection with the projects. During one of these trips, You Mi arranged for a banquet hosted by COMSOX at the China Paradise restaurant in Beijing, which featured 10-course meals with exotic delicacies. Officials of the municipal government and their wives were guests at the banquet .

. Although COMSOX has lost money on its China operations for 4 straight years, it has now received notice from the State Bureau of Taxation that it owes 2,000,000 yuan in back income taxes on its projects, plus penalty and interest. You Mi arranged for the associated accounting and tax work to be done by a local firm in Shanghai . The project manager on one project has also called and said that government security authorities have notified him that COMSOX has been engaged in illegal business activities. A provincial environmental authority has also alerted the representative office that there have been illegal waste disposal activities from one of the project sites. Finally, two secretaries in the Shenzhen representative office have threatened to file a claim against the company because one of the visiting U.S. project managers harassed them during his stay.

COMSOX legal counsel tries to call You Mi, but his phone has been disconnected.

CASE STUDY 3

The company was engaged in a competition with the usual cast of international competitors to supply an upgraded computer system to the Ministry of Defense in Persia. The public tender process had been stalled for some time, the Ministry of Defense mired in publicized accusations that its ongoing technical evaluation process was flawed and subject to bias and other irregularities. Par for the course in Persia.

The company attorney entered the proposal manager's office to find him scrawling what the attorney hoped were rhetorical questions on his whiteboard:

1. Can we change our bid to a joint bid with BECAL (the Europeans), who have also submitted a tender on this program?
2. Our Sales Representative ("SR") in Poland has recently come into possession of some documentation, marked "BECAL proprietary", which summarizes BECAL's current difficulties in meeting the spec requirements of a similar software upgrade for its customer in Eastern Europe. IF BECAL declines a joint bid strategy, can we make this information available to the Persian MOD?
3. Our SR in Persia believes the MOD lawyer on the technical committee to be the most antagonistic

towards our bid. The SR has therefore retained a Persian lawyer on contingency to contact the MOD lawyer privately to make our case. Can we increase the SR's commission to pay for this?

4. Can we bring the head of the procurement committee to the United States to inspect our Omaha facility and review our software in operation? What about his request to build in a few days in Las Vegas and to include his 2 colleagues and their wives in the invitation?
5. Does the Company's gift program cover a set of golf clubs for the committee head during his visit (we'll need to reciprocate for the inevitable gift he'll be providing to me)?

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