

# Greased Palms Can Create Big Headaches

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# Anti-Bribery? How Does This Have ANYTHING to Do with What I Do?

- Bribery is a huge issue when flying abroad
- Grease payments and gifts may:
  - Violate U.S. or foreign anti-corruption laws
  - Breach corporate ethics codes
  - Be costly and sometimes career ending
- Our Goal
  - What is the law?
  - How do you spot a bribe?
  - How can you reduce your risk?

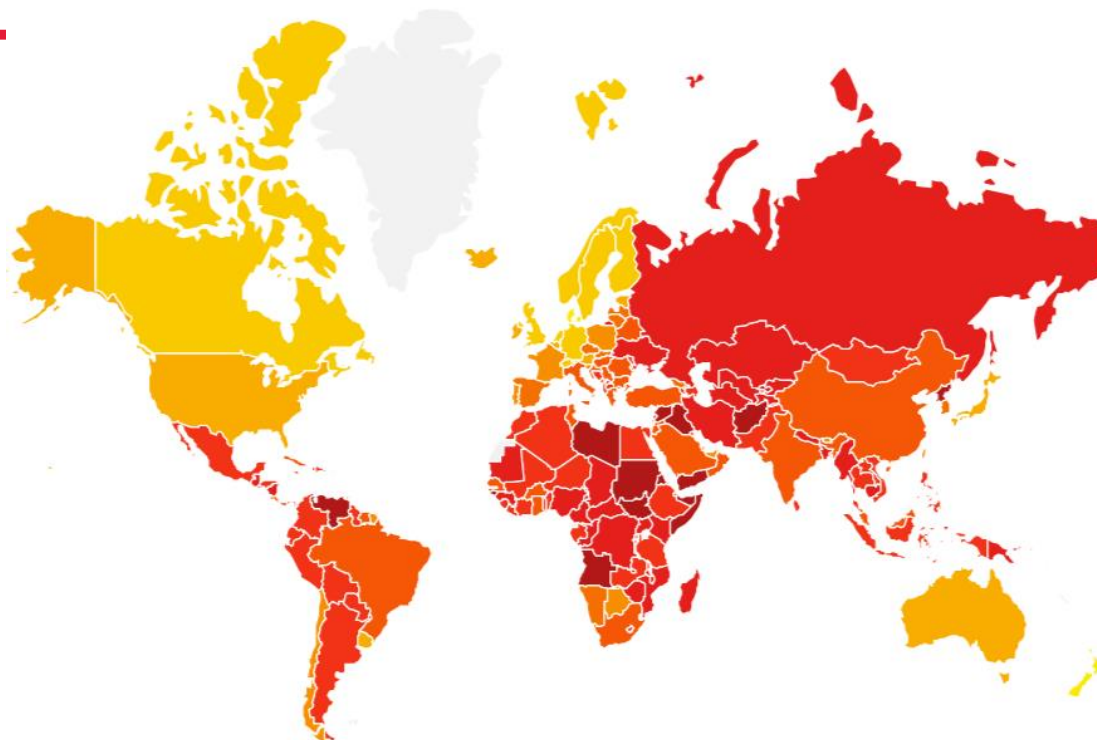


# Polling Question #1

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- Do you have a company code of conduct that includes limits on giving or receiving gifts, entertainment or travel?
  - Yes
  - No

# Where Is the Risk Greatest?



Source: Transparency International Corruption Perception Index 02/01/2016

# Where Do Companies Get in Trouble?

## Third Party Agents



- Due diligence of foreign third parties and agents is essential.
- U.S. companies are liable for acts of foreign subsidiaries, their employees and joint ventures as well as consultants, agents, distributors & representatives.

## Gifts & Entertainment



- In many cultures it is common to give gifts as a general expression of goodwill but the boundary between a gift and a bribe can be narrow.
- Problems arise when the gifts are disproportionate, either in size, expense, or frequency.

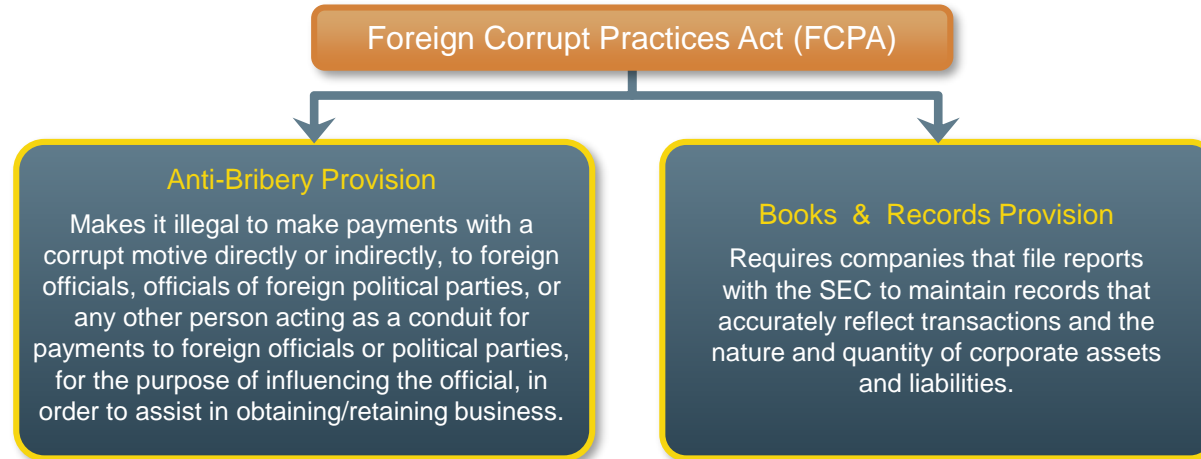
## Travel, Meals & Lodging



- Cannot offer to pay excessive travel and entertainment costs.
- Any expenses that are reimbursed directly to a foreign official should be done so only after receiving legitimate receipts and support.

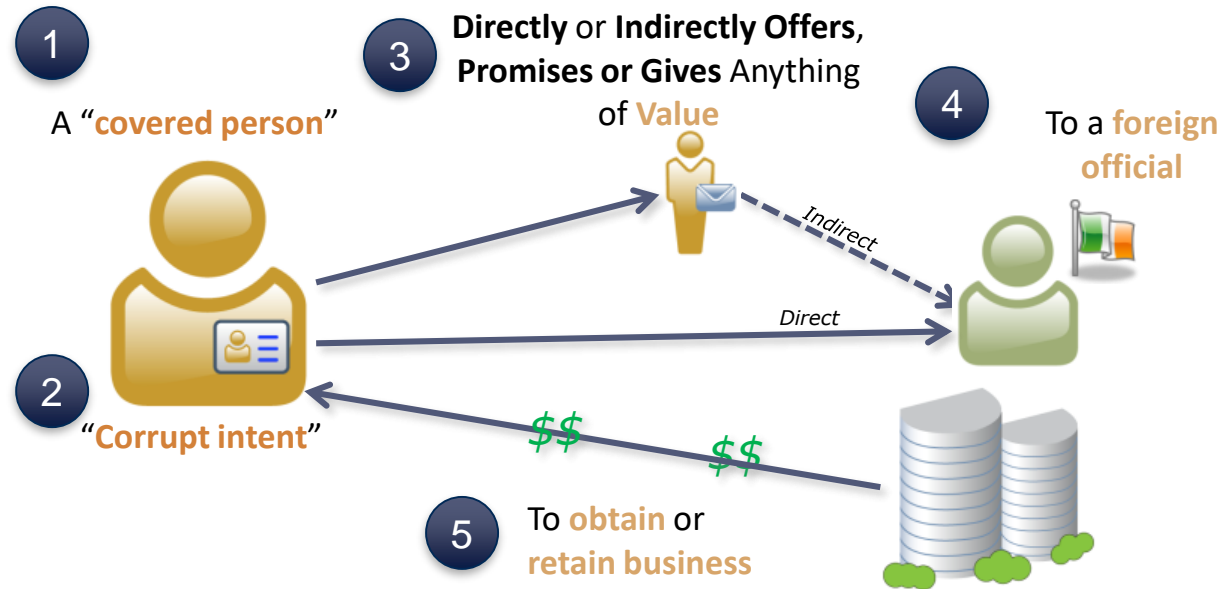
# Foreign Corrupt Practices Act

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# Elements of FCPA Violations

The foreign corrupt practices prohibited by the FCPA consists of five separate elements:



# The FCPA Applies Broadly for a Criminal Statute

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- Applies broadly wherever there is a U.S. nexus
  - U.S. citizens, U.S. companies and their foreign subsidiaries
  - Wiring funds through a U.S. bank
- Foreign officials
  - The lowly clerk stamping your passport
  - Employees of foreign government-owned airlines, airport services providers, etc.
- Anything of value
  - Need not be cash
- Intent
  - Know or have reason to know agent was likely to pay bribes on your behalf

**A COMPANY CANNOT OUTSOURCE THEIR CORRUPTION TO AGENTS/THIRD-PARTIES**



# WARNING SIGNS in “Plain English”

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- “Please Pay Me In Cash”
- “Pay Me Through My Offshore Bank Account”
- “While My Commission Rate Is Twice The Market Rate, I’m Well Worth It”
- “My Close Relative Is a Government Official, and You Don’t Have a Chance Unless You Deal With Me”
- “I Have No Facilities or Staff, But I’ll Get the Job Done”
- “I Have Never Worked In Your Industry Before, But I Know The Right People”



# Are Grease Payments OK?

Limited exception under the FCPA for facilitation or “grease” payments made to expedite or secure the performance of a routine governmental action by a foreign official are permitted by the FCPA, but NOT many other countries’ laws (e.g., UK & Germany):

- Obtaining permits on proper application
- Expedited lawful customs clearance
- Mail pickup and delivery, police protection, etc.
- Obtaining issuance of entry or exit visas



**Facilitating payments must be given to secure or accelerate performance of nondiscretionary acts that an official is already obliged to perform.**

# Scenario – Proper Invoicing (no hidden charges) – Facilitation Fees

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- You notice that one foreign supplier includes additional fees on its invoices, with no back up, as “miscellaneous.”
- When you question this, the supplier explains that it is an additional fee that they have been asked to pay to the permit office.
- They further explain that they have been unable to obtain a receipt for the cash and it is not included in the published price list.



# Operational Views on Grease Payments

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- What kinds of requests are pilots/handlers getting?
- How do you handle these requests?
- Company stance on grease payments?
- Do companies have expectations regarding service providers in foreign countries?



# No Clear Line between Legitimate Promotional Expense and Illegal Bribe

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## Gift



- Moderate in cost
- Not money (i.e., food or flowers)
- Items:
  - Small novelties
  - With company logo
  - Not related to gaining business
- To foster good will or build relationships

## Bribe



- Extravagant
- Money
- Items:
  - Large (big screen TV, motorcycle)
  - Related to gaining business
- An inducement or reward for business

# Travel & Entertainment

## Travel & Entertainment

- Reasonable in cost
- Customary practice
- You are in attendance  
(= entertainment)
- To foster good will or build relationships
- Specific business purpose



## Bribe

- Expensive in cost
- Not customary
- You are not in attendance  
(= gift)
- An inducement or reward for business
- Tourist side trip

# Polling Question

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- I regularly tip one or all the following: handlers/customs officers/fuel providers
  - Yes
  - No
  - Sometimes

# Tipping and Other Gifts in Practice

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- How do you handle tipping?
- What is your process for giving gifts to handlers/agents/officials?



# Tips for Mitigating Risk When Operating Abroad

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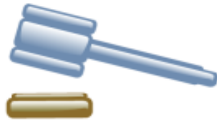
- What processes has your company put in place to mitigate the risk of third-parties making payments on your behalf?
- What recommendations do you have for pilots/planners not associated with a large corporation with compliance resources?

# Company Procedures & Codes

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- Know Your Customer (KYC) Processes:
  - Ensure you are not transacting with sanctioned person (e.g., drug traffickers)
  - Identify risk of diversion of goods to sanctioned country (e.g., Iran, Syria)
  - Other risks of corruption/money-laundering
- Ethical Codes/Codes of Conduct
  - May limit what you can accept from third-parties
  - Avoiding conflict of interest
  - Protecting company confidential information

# Additional Reasons Why Anti-Bribery Compliance Is Important



## Increased Enforcement:

While the FCPA has been around since 1977, enforcement is up nearly 200% since '07. 2017 marks the 40th Anniversary of the FCPA. The total fines and disgorgements since inception totals approximately \$9 Billion. \$8.1 Billion has been paid since '07.



## Increased Record Penalties:

Penalties are way up from prior years. The combined total in 2016 resulted in 53 enforcement actions topping \$2 Billion USD.



## Increased Enforcement Against Individuals:

DOJ and SEC are increasingly targeting executives and employees; sentences include jail time. Currently, companies may not get credit for an effective compliance program or a non-prosecution agreement without turning over the individuals suspected of bribing to the regulators.



***In addition, there is increasing cooperation and coordination internationally with some investigations targeting entire industries or regions.***

# Questions?

