

# 1551—The United States Foreign Corrupt Practices Act

## Introduction

This Section of the Manual provides policies and guidance relating to key provisions of the U.S. Foreign Corrupt Practices Act (“FCPA”) and is designed to facilitate compliance with the FCPA by Member Firms when providing services in connection with Covered Engagements ((i) any Engagement, business opportunity, or proposal in which the U.S. Member Firm is, or may become, the Referring Member Firm; or (ii) any Engagement, business opportunity, or proposal in which any Member Firm is, or may be, engaged to provide services directly to a U.S. Person or Entity, regardless of whether the Engagement involves the U.S. Member Firm).

### ***THE FOREIGN CORRUPT PRACTICES ACT OF 1977, AS AMENDED***

The FCPA is a U.S. law aimed at prohibiting bribery of Foreign Officials (i.e., non-U.S. officials), as defined below. Specifically, the FCPA prohibits any U.S. Person or Entity from corruptly providing or offering to provide, directly or indirectly, Anything of Value to a Foreign Official for the purpose of influencing a decision to obtain or retain business or secure an improper advantage.

The FCPA has been very broadly construed by U.S. authorities, and covers the conduct of any U.S. Person or Entity, including any U.S. citizen or resident, any U.S.-based company or any company that is publicly listed in the U.S. regardless of where it is based, or any other entity, any foreign subsidiary of such a company or other entity, any officer or employee of such a company or other entity, and any third-party or agent acting on behalf of any of the foregoing (regardless of citizenship or residence). The FCPA also contains provisions requiring that accurate books and records be maintained, which prohibits disguising or improperly recording any payment or transaction that may violate its terms. The FCPA provides for significant criminal and civil penalties, applicable to both entities and individuals.

Both the U.S. Member Firm and Clients of any Member Firm that are U.S.-based or are U.S.-listed companies (including local affiliates and subsidiaries of such companies) are subject to the FCPA. Although the FCPA may not apply directly to non-U.S. Member Firms in all respects, the services that such Member Firms provide to or on behalf of any U.S. Person or Entity must not involve conduct that would violate the FCPA.

Capitalized terms have the meanings set out in the “Definitions” section at the end of this Section or in the DPM Glossary.

## Policies and Guidance

1. **With regard to any Covered Engagement, Member Firms, their Partners, Professional Staff and Support Staff must not violate the FCPA. Specifically, Member Firms:**
  - a. **Should not provide or offer to provide, directly or indirectly, Anything of Value to any Foreign Official for the purpose of corruptly influencing a decision to obtain or retain business, or to secure an improper advantage.**
  - b. **Should not make any Facilitation Payment except in rare circumstances set out below where very specific criteria exist, necessary approvals are obtained, accurate reporting of the payment(s) takes place, and no other law prohibiting such payments (Other Anti-Corruption Laws) would be violated.**
  - c. **Should not act indirectly to cause any violation of this Section of the Manual, for example by engaging a third party (e.g., vendor, agent, or consultant) or by using personal funds to engage in conduct prohibited herein.**
  - d. **Should consult the “Detailed FCPA Compliance Requirements” section below for specific information regarding compliance with this Section of the Manual.**
2. **Nothing in this Section of the Manual obviates or diminishes Member Firms’ obligations to comply with Other Anti-Corruption Laws, any other law, rule, or regulation, any DTTL policy, or any of the Member Firm’s policies, as applicable.**
3. **Questions concerning compliance with this Section of the Manual should be referred to the Member Firm Reputation and Risk Leader (or his or her designee), who is encouraged to consult (a) with DTTL Risk and/or DTTL General Counsel; and (b), in the case of a U.S. Prime Covered Engagement, with the Anti-Corruption Compliance Group of the U.S. Member Firm ([AntiCorruption@deloitte.com](mailto:AntiCorruption@deloitte.com)) or the US Member Firm Reputation and Risk Leader (or his or her designee).**

### Detailed FCPA Compliance Requirements

4. **Should any Member Firm Partner, Professional Staff or Support Staff believe it is necessary to provide or offer to provide, directly or indirectly, Anything of Value to a Foreign Official in connection with, or in the course of, a Covered Engagement, including, but not limited to, a Facilitation Payment or Personal Safety Payment, such Partner, Professional Staff or Support Staff should obtain prior approval (a) from his/her Member Firm Reputation and Risk Leader (or his or her designee), and (b), in the case of a U.S. Prime Covered Engagement,**

from the Anti-Corruption Compliance Group of the U.S. Member Firm ([AntiCorruption@deloitte.com](mailto:AntiCorruption@deloitte.com)), or the US Member Firm Reputation and Risk Leader (or his or her designee).

5. **Facilitation Payments should not be approved except in rare circumstances where all of the following criteria are met: (a) the assistance for which the Facilitation Payment is to be made is a non-discretionary action and the Facilitation Payment is made only to facilitate such action; (b) no reasonable alternative to making the Facilitation Payment exists; (c) the duties of the person receiving the Facilitation Payment are essentially ministerial or clerical; and (d) making such Facilitation Payment would not violate any Other Anti-Corruption Law that is applicable in the circumstances.** For example, the UK Bribery Act and various Other Anti-Corruption Laws prohibit Facilitation Payments. Such laws need to be considered carefully in determining the permissibility of any Facilitation Payment.
6. **Personal Safety Payments should be made only in rare circumstances and after obtaining the prior approval(s) required under paragraph 4. In circumstances where an individual reasonably believes that the imminence of a serious risk to personal health or safety makes obtaining such prior approval(s) impracticable, any such payment should be reported in compliance with paragraph 7.**
7. **In the event Anything of Value (including, but not limited to, any Facilitation Payment or Personal Safety Payment) has been provided or offered, directly or indirectly, to any Foreign Official in connection with, or in the course of, a Covered Engagement and such provision or offer was not made in compliance with Paragraph 4 above, such provision or offer should be reported as soon as possible (a) to the Member Firm Reputation and Risk Leader (or his or her designee) and (b), in the case of a U.S. Prime Covered Engagement, also to the Anti-Corruption Compliance Group of the U.S. Member Firm ([AntiCorruption@deloitte.com](mailto:AntiCorruption@deloitte.com)), or the US Member Firm Reputation and Risk Leader (or his or her designee).**
8. **In the event Anything of Value (including but not limited to any Facilitation Payment or Personal Safety Payment) has been provided, directly or indirectly, to a Foreign Official in connection with, or in the course of, any Covered Engagement, such provision should be accurately described and recorded in the books and records of the relevant Member Firm and, if billed to the Client, in the Client billing records.**
9. **Should any Member Firm Partner, Professional Staff or Support Staff discover conduct, whether by Client personnel, Member Firm personnel, or other parties engaged by the Client or Member Firm, that he or she reasonably believes would violate the FCPA, such Member Firm Partner, Professional Staff or Support Staff should report such conduct (a) to his/her Member Firm Reputation and Risk Leader (or his or her designee); and (b), in the case of a U.S. Prime Covered**

**Engagement, the Member Firm Reputation and Risk Leader should report such conduct to the Anti-Corruption Compliance Group of the U.S. Member Firm ([AntiCorruption@deloitte.com](mailto:AntiCorruption@deloitte.com)), or the US Member Firm Reputation and Risk Leader (or his or her designee). In addition, the Member Firm Reputation and Risk Leader should also notify the Lead Client Service Partner. Reporting obligations under this Paragraph should be undertaken in a manner consistent with privacy or confidentiality laws, if any, that may be applicable to the Member Firm.**

#### **Effective Date**

**Issued February 15, 2013 and effective April 30, 2013.**

#### **Definitions**

As used in this Section of the Manual, the following terms have the meanings set forth below:

**“Anything of Value”** means anything having any value or tangible benefit at all including, but not limited to:

- Cash and cash equivalents
- Gifts (including, but not limited to, gifts or courtesies forming part of a local custom; wedding, funeral and personal gifts; jewelry)
- Political contributions
- Donations to charities or foundations at the behest of a Foreign Official or his/her family
- Entertainment (including, but not limited to, meals and tickets to venues and events including events sponsored by a Member Firm)
- Travel and travel-related expenses
- Accommodation and hospitality
- Ownership rights or interests in joint ventures or other entities
- Inflated or excessive contract prices
- Below market leases or rentals
- Loans
- Offers of employment (whether long-term or temporary), including consulting fees, speaking fees, or honorariums, scholarships, or internships.

**“Covered Engagement”** means

- a) any U.S. Prime Covered Engagement; or
- b) any engagement, business opportunity, or proposal in which a Member Firm is, or may be, engaged to provide services directly to a U.S. Person or Entity.

**“Facilitation Payment”** is defined in DPM 1550 as “a small payment to a government official to facilitate a routine action to which there is already an entitlement.” For purposes of this policy, this means a payment generally of a small value (i.e., typically less than US\$50) made to a Foreign Official for the purpose of securing or expediting a non-discretionary, routine governmental action that the Foreign Official is already obliged to perform.

NOTE: Official fees paid directly to a government entity for services that are advertised and generally available to all persons are permissible payments and are not Facilitation Payments. For example an official processing fee charged by, and paid directly to, a government office or ministry for the issuance of a passport or visa would not be considered a Facilitation Payment nor would it be prohibited under the FCPA.

**“Foreign Official”** covers a very broad range of non-U.S. persons and includes (a) an officer or employee of a non-U.S. government or any department, agency, state-owned or state-controlled enterprise or instrumentality thereof, or of a public international organization; (b) any person acting in an official capacity for or on behalf of any such government or department, agency, state-owned or state-controlled enterprise or instrumentality, or for or on behalf of any such public international organization; or (c) any non-U.S. political party, any official of a foreign political party, or any candidate for non-U.S. political office. A Foreign Official includes not only a person who performs traditional governmental or administrative functions, but also any member of a royal family, or provincial or tribal government, or an employee of an entity in which a governmental body has an ownership interest (even a minority interest). Such employee could still qualify as a Foreign Official even if he or she performs business-related functions as an employee of such entity engaged in commercial, rather than governmental, activities.

Examples of Foreign Officials include, but are not limited to, the following:

- Any officer or employee of a non-U.S. government (including, but not limited to, any non-U.S. military personnel), or any of its departments, agencies, incorporated entities, or political subdivisions (including, but not limited to, wholly or partly state-owned and state-controlled enterprises)
- Any director, officer, or employee of any legal entity or joint venture that is controlled (qualitatively or quantitatively) or significantly owned by a non-U.S. government (including, but not limited to, any non-U.S. military personnel) or any of its departments, agencies, political subdivisions, or incorporated entities (including, but not limited to, state-owned and state-controlled enterprises)

- Any officer or employee of any public international organization (including, but not limited to, The Organization for Economic Cooperation and Development, The World Bank, The United Nations, The International Monetary Fund, non-U.S. donor banks, and the International Olympic Committee)
- Any person that represents, or acts on behalf of, or in an official capacity for, any non-U.S. government or any of its departments, agencies, political subdivisions, or incorporated entities (including, but not limited to, state-owned and state-controlled enterprises), even if in an honorary capacity
- Any non-U.S. political party, party official, or candidate for non-U.S. political office
- Any member of a royal family or provincial or tribal government
- Any member of a non-U.S. legislative or judicial body.

**“Other Anti-Corruption Laws”** means any law other than the FCPA the purpose or objective of which is to prevent or prohibit bribery or other forms of corruption.

**“Personal Safety Payment”** means a payment to a Foreign Official that is necessitated because the personal health or safety of an individual is at serious risk.

**“U.S. Person or Entity”** means

- a) any individual who is a citizen, national or resident of the United States; or
- b) any entity, including such entity’s branches and subsidiaries outside the US and all of their respective officers, directors, employees and agents, that (1) is organized under the laws of the United States or of any state or instrumentality thereof; or (2) has its principal place of business in the United States; or (3) is publicly traded on a U.S securities exchange or is otherwise required to file reports with the U.S. Securities and Exchange Commission (e.g., a company with American Depository Receipts traded on a U.S. securities exchange); or
- c) any non-U.S. national or entity, including such entity’s officers, directors, employees and third parties that commits an act in the United States in furtherance of a violation of the FCPA.

**“U.S. Prime Covered Engagement”** means any engagement, business opportunity, or proposal in which the U.S. Member Firm is, or is reasonably expected to become, the Referring Member Firm and any other Member Firm is, or is reasonably expected to become, a Participating Member Firm.