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## The Foreign Corrupt Practices Act: What Is It And Is It Something Worth Talking About?

### Three Things:

1. The FCPA prohibits bribery *by American corporations of foreign officials*

Note: applies to any individual, firm, officer, director, employee, agent, or stockholder *acting on behalf of the company.*

Note: The conduct of subsidiaries (*foreign and/or domestic*) can be attributed to the parent.

Note: The FCPA requires that the person(s) making payment have “corrupt” intent – i.e., that payment is intended to induce recipient to misuse his/her official position to direct business improperly.

Note: The FCPA prohibits payment, offer, and promise to pay money or anything of value.



Note: Recipient must be a foreign official – could include foreign political party, party official, and/or candidate for office – but caveat: US DOJ Investigators *keenly* on alert for payments “one-step-removed” and/or “intended ultimately to benefit.”

2. The FCPA requires that U.S. corporations that transact business abroad keep accurate books, records, and accounts.

Note: Book error alone could lead to violation (e.g., \$ payment to Foreign official listed as “equipment purchase” could, without any other showing, result in FCPA charge that would not require the prosecutor to demonstrate that bribe payment was actually made in order to secure conviction.

3. The FCPA requires that issuers that are registered with the Securities and Exchange Commission maintain a responsible internal accounting control system.

Note: You don't have to be U.S. Corp – if the company has issued securities in the United States that are registered with the SEC, then the Corp is subject to the FCPA (and with the 1998 amendment, foreign company is now also subject to charges if they make or cause corrupt a payment to be made in U.S. territory).