

9th International Anti-Corruption Conference (IACC), 10-15 October, 1999, Durban, South Africa

APPLICATION OF CORPORATE COMPLIANCE PROGRAMS TO SALES REPRESENTATIVES

Michael N. Davies, Q.C.
Chairman, Transparency Committee
Pacific Basin Economic Council (PBEC)

- I. Relevant Provisions of ICC Rules and OECD Convention**
- II. Risks When Using an Agent**
- III. The Remedy**
- IV. Selection Process**
- V. Compensation**
- VI. Engagement**
- VII. Red Flags**
- VIII. Summary**

9th International Anti-Corruption Conference (IACC), 10-15 October, 1999, Durban, South Africa

I. RELEVANT PROVISIONS OF ICC RULES AND OECD CONVENTION

es

terprise may directly or **indirectly** offer or give a bribe (Art. 2a); and

prises should take reasonable measures to ensure that no part of an agent's commission is passed on by the agent as a
3)

Convention (payment of bribes to foreign public officials)

s paid directly or **through intermediaries** to a foreign public official
ler that official act or refrain from acting re performance of official duties
ain or retain business or other improper advantage
? a criminal offense

"look-in-the-sand" approach no longer acceptable

plier knows of proposed illegal activities of agent (or deliberately ignores indications)
- may have indirectly authorized ? possible criminal prosecution

ver, if supplier can demonstrate:-

did not authorize or approve the payment
conducted due diligence to be satisfied agent would not pay a briber, and
investigated and resolved "red flags" relating to the agent
? risk of criminal liability significantly reduced

II. RISKS WHEN USING AN AGENT

risks when using an agent:-

- usually nationals of foreign country – bribery may be common
- different ethical standards
- not trained in supplier's code of conduct
- where commission large, provides temptation and opportunity
- may not only tarnish company's reputation, but may also ? criminal prosecution

Why use an agent?

- often a key element in international marketing and sales structure
- helps to establish favourable image of company in world markets
- usually lives in same country as customer
- speaks language and familiar with laws and regulations
- promotes sale and facilitates performance of obligation
- provides important local liaison with customers and ongoing sales service
- may be required by local law

III. THE REMEDY

Remedy:-

- company policy only to hire reputable firms
- compensation limited to what is reasonable related to services performed
- agent bound by company's no-bribery policy

9th International Anti-Corruption Conference (IACC), 10-15 October, 1999, Durban, South Africa

to Achieve Compliance:-

eed to establish specific criteria and procedures re:-

- selection
- compensation, and
- engagement

IV. SELECTION PROCESS

ough background check - reputation for business integrity as demonstrated by:-

- good standing in the business community
- sound business practice standards
- absence of conflicts of interest
- good relationship with potential customers
 - favourable embassy and other appraisals

ten application - eliciting information regarding:-

- nature and history of applicant's business
- details of ownership and principal officers and managers
- information about representation of other companies (with a principal contact for each)
- office facilities and staff
- affiliated companies
- business or personal relationships with proposed customer
- principal product lines presently handled for other enterprises
- any litigation involving sales rep's activities

nal interview and explanation of company's "no bribery" policy

- written acknowledgement of agent

l Recommendation Form

- establishing business need for local sales representation
- justifying proposed compensation
- certifying satisfaction that agent will comply with "no-bribery" policy

or Management Approval

V. COMPENSATION

. percentage of contract price, and conditional on award of contract.
ss of reasonable compensation for legitimate services
? temptation and opportunity to pay a bribe

ublish specific compensation guidelines

- sliding scale (commission percentage ↓ as contract value ↑)

anager to outline reasons for proposed compensation

pany guidelines re method, currency and place of payment

- cheque only, no cash

dic payments in sync with payments under contract

accurate detailed written records

VI. ENGAGEMENT

ritten agreement

ed term or life of project

dertaking to comply with law and company's "no-bribery" policy

mediate termination for breach

Audit rights and periodic compliance review

VII. RED FLAGS

(advance warnings of potential illegal activities)

Unusual sales rep:

- does not reside in same country as customer or project
- does not have any significant business presence within the country
- represents other companies with a questionable reputation
- requests commission be paid in a third country or numbered bank acct. or third person
- requires payment of the commission, (or significant portion) immediately upon award by customer of the contract
- company
- claims that he can help secure the contract because he knows all the right people
- has a family or other relationship that could improperly influence customer's decision
- arrives on scene just before contract is about to be awarded

Signs of questionable activity:

- a customer who suggest that a bid be made through a specific sales agent
- a commission that seems unusually large in relation to the services provided
- a request for an increase in the agreed commission in order to "take care" of some people

be thoroughly investigated and satisfactorily resolved

VIII. SUMMARY

write into code of conduct provisions requiring responsible company personnel to hire only qualified and reputable
make it clear that all agents bound by the code's anti-bribery provisions
before hiring an agent conduct a detailed background check on professional competence and personal integrity;
require prospective agents to fill out a detailed application form listing their business details, product lines and refer
discuss the company's "no bribery" policy with the proposed agent and be satisfied that they will comply;
establish specific compensation guidelines to ensure that an agent's compensation is not excessive in relation to the
services to be rendered;
require senior management approval of all sales representative appointments;
pay all agents' commissions by cheque and not in cash;
require agents to sign a written agreement containing, among other items, a commitment not to pay bribes; and
be alert to "red flags" which can signal an agent's questionable integrity