

FCPA Training: Some Practical Aspects of Resisting a Bribe

I recently was asked to prepare some Foreign Corrupt Practices Act (FCPA) training which used examples of requests for bribes to help prepare the company's employees if they are solicited to pay a bribe. To do so I relied on the expanded edition of *Resisting Extortion and Solicitation in International Transactions* (RESIST). It is a practical tool to help companies train employees to respond appropriately to a variety of solicitations.

Iohann Le Frapper, who chaired the RESIST initiative, stated that "RESIST is the only anti-bribery training toolkit developed by companies for companies and sponsored by the four global anti-corruption initiatives working on the supply side of the issue of fighting corruption," and it "helps businesses avoid solicitation from the onset"; it also provides practical advice on how best to confront demands for bribes when they do arise.

RESIST presents 22 scenarios which discuss solicitation of bribes in the context of project implementation and in day-to-day project operations.

Each scenario presented is designed to respond to two basic questions with real world facts and responses:

- Demand Prevention - How can the company prevent the demand from being made in the first place?
- Demand Response - How should the company react if such a demand is made?

The paper also presents a general list of suggestions which companies can implement to assist in their overall FCPA compliance effort. Embedded within are specific procedures to put these general suggestions into practice, for example the suggestions on Demand Prevention include (1) general company anti-corruption policies; (2) policies on facilitation payments; (3) policies for company representatives who may be exposed to solicitation of bribes; (4) techniques for dealing with specific risks; (5) due diligence of agents and intermediaries; (6) management of agents and intermediaries; (7) implementation of additional control procedures; (8) transparency in the procurement process; (9) initiation of collective action to improve overall business integrity; and (10) implementation of legal and financial precautions. The suggestions on Demand Response include: (1) the immediate response; (2) internal company reporting; (3) company investigation, including discussion with the relevant persons; (4) disclose to the appropriate external source, if appropriate; and ultimately (5) withdrawal from the situation, whether it is the project or the entire country.

Using the RESIST scenarios I was able to create training which many of the participants felt gave them some hands on advice in situations they might face. It fleshed out many of what the employees felt were the more theoretical aspects of the FCPA. The RESIST tool is a useful aid and one that I recommend for the FCPA compliance specialist. It provides a list of common

scenarios, which companies have faced in the past, how to handle them and proposes controls to implement to try and ameliorate the solicitation of bribes and outright extortion.

The full document may be downloaded at

<http://www.iccwbo.org/policy/anticorruption/index.html?id=37568>.

This publication contains general information only and is based on the experiences and research of the author. The author is not, by means of this publication, rendering business, legal advice, or other professional advice or services. This publication is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal advisor. The author, his affiliates, and related entities shall not be responsible for any loss sustained by any person or entity that relies on this publication. The Author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The author can be reached at tfox@tfoxlaw.com.

© Thomas R. Fox, 2011