

## **A SITUATIONAL ANALYSIS ON INTERNATIONAL ETHICS** *(FIVE MINUTES FROM PERFECT)*

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**Target Audience:** International business executives who want a working knowledge of the two most significant legal *Acts* dealing with ethics in U. S. history would benefit from this research. Additionally, those seeking a summarized version of the often burdensome legislation which is permeating the U. S. corporate world would benefit from this paper.

**Purpose of this Paper:** To provide a single, summarized source of information on the two most profound *Acts* affecting U. S. corporate executives in modern times.

**Executive Summary:** The Sarbanes-Oxley Act (2002) and the Foreign Corrupt Practices Act (1977) are arguably the two *Acts* that have had the greatest impact on U. S. corporations in modern times. Executives facing either of these *Acts* would be well advised to understand the intent and legal impact of the two pieces of legislation on both themselves and their corporations.

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## INTRODUCTION TO INTERNATIONAL ETHICS

### Definition:

Ethics is that branch of philosophy which is concerned with human character and conduct. It deals with man more as a source of action than as a subject of knowledge. It has to do with life or personality in its inward dispositions, outward manifestations and social relations. Aristotle gave this study – the science of customs – its name and systematic form from the Greek *ethika*, from *ethos*, meaning "custom," "habit," "disposition". But inasmuch as the words "custom" and "habit" seem to refer only to outward manners or usages, the mere etymology would limit the nature of the inquiry. The same limitation exists in the Latin designation, "morality" since mores primarily concern manners.

(Source: *International Standard Bible Encyclopedia*)

### Introduction:

This research paper arose from the idea of providing the reader with an anecdotal overview of international ethics. It has, despite the best of intentions, become a much more serious piece on the legislative nature of corporate ethics within the United States. What follows is a summary of the two most important U. S. *Acts* which deal specifically with the areas of international ethics; bribery, conduct and reportability.

There is a distinction between lawful and ethical behavior. While laws are or should be based on certain ethical principles, ethical behavior by individuals or companies refers to constraints on action that go beyond their duty to act legally. This paper is primarily focused on the legal aspects of corporate behavior.

The subject of international ethics has proved to be elusive at best and quite befuddling at worst. What one country feels is appropriate conduct another considers a punishable offense.

There have been numerous attempts, at an international level, to ascribe some sort of a rule or definition to the terms *ethics* or *ethical behavior* but none have withstood the test of time.

Referencing Michael Porter's work on the competitive advantages of nations, the principle economic goal of each nation is to produce a high and rising standard of living for its citizens.

A nation's standard of living is determined, in part, by its level of productivity – which is the value of the output produced by a unit of labor or capital based on the:

- quality & features of the product which affects prices
- efficiency of production

It appears that traditional theories on national competitiveness often seek to answer the wrong question.

The critical question becomes -

*not:* Why do some nations succeed and others fail in international competition?

*but:* Why are firms based in a particular nation able to create and sustain competitive advantage against the world's best competitors in a particular industry or segment?

Critical to this creation and sustaining of advantage is, argues Porter, innovation. Such items as regulations, tariffs and legislation can also impact sustained advantage. In the case of this paper, legislation will be looked at closely in the form of two U. S. *Acts*.

- Sarbanes-Oxley Act (2002)
- Foreign Corrupt Practices Act (1977)

## SARBANES-OXLEY ACT (2002)

### EXECUTIVE BRIEF

The Sarbanes-Oxley Act of 2002 (the "Act") is much more than a tightening of corporate reporting requirements. I believe the Act has significantly altered the prosecutorial landscape in which Justice Department and agency investigations will play out. Even though the Act's requirements are limited to "issuers" or reporting companies, its eventual impact goes further. Officers of any organization – whether non-profit or privately held – may be affected by the Act's new standard of corporate conduct and the law's impact on penalties that can be threatened against individuals during an investigation.

Section 302 of the Act details new obligations for corporate reporting. The Act requires officers to aver that the reports contain all material facts needed to render the financial results "not misleading." As interpreted by the Securities and Exchange Commission ("SEC"), corporate officers are to establish disclosure controls and procedures that are different from historical internal accounting controls.

In short, Section 302 targets a favored defense for individual officers being threatened during an investigation of corporate fraud. This defense – the self-blinding or "who me?" response – usually ran along the lines of an officer demonstrating that she had no idea the problem had occurred and would have remedied it had she known. The officer traditionally would then argue that it was a "corporate" not an "individual" failure, therefore the individual officer should not be charged.

Section 302 removes that defense and reverses it, thus making it illegal for an officer to have "internal controls" in place that do not "ensure" that relevant material information concerning the company's activities are made known to the officer. Further, the officer has to check that this system of "internal controls" actually works and that the people involved in it are acting honestly. *See* Act Section 302(a) (4) and (5).

Notably, the disclosure controls and procedures go well beyond accounting or financial matters. This means that the disclosure control and procedures need to be such that a responsible officer can receive information at every place where the company's activities intersect with a regulatory control if a violation of that regulation could have a material impact on the company. Depending on the company, this requirement underscores the advisability of establishing controls to ensure compliance with regulatory regimes that run the gamut from labor and environmental to rules governing international trade, conflicts of interest, securities disclosure, insider trading, records retention and privacy.

As a corollary to its new requirements, the Act required the U.S. Sentencing Commission to revise Federal Sentencing Guidelines that would apply to violations of the Act and other prohibitions on corporate fraud. The draft amendments to these Guidelines make it evident that the impact of the Act will be felt far beyond publicly traded companies. For example, in considering enhanced penalties for corporate fraud, the Commission proposes "extending the enhancement to include other organizations with a substantial number of employees." It questions whether the new sentencing provisions should "apply to cases in which an officer . . . of a large, non-public organization violates any provision of security [sic] law." See 67 Fed. Reg. 70999, 71000, 71002 (Nov. 27, 2002).

This means that the Act has not only altered the way publicly traded companies should operate, it has also set a new standard, possibly enhancing the penalties faced by officers of any organization (regardless of its legal form) in the event of losses due to fraud.

The Act bolsters governance and compliance requirements in two ways. Section 302(a) (3) requires certification that periodic reports "fairly present...the financial condition...of the issuer" and is meant to include an analysis of legal and compliance risks. Section 406 requires a code of ethics for senior financial officers (as well as the CEO under regulations proposed by the SEC), including such standards as are necessary to promote compliance with governmental rules and regulations.

The NYSE and NASDAQ have both proposed corporate governance and code of conduct requirements as part of their listing requirements, and have mandated that such programs apply to all employees.

Some of these requirements are effective already, and the remainder will be effective for reports filed in 2003. With this background, directors and officers of public companies and large private companies should immediately review and modify, as appropriate, their governance and compliance policies and procedures. Given the renewed emphasis on the potential criminal aspects for compliance failures, the preferred approach is to develop a system that aligns with the Organizational Sentencing Guidelines (“OSG”).

The OSG provide a seven-part test for “effective programs”:

- 1) Established compliance standards and procedures
- 2) High-level individual(s) assigned overall responsibility
- 3) No delegation to individuals with propensity to illegal activities
- 4) Effective communication to all employees
- 5) Reasonable compliance steps: monitoring, auditing and reporting systems
- 6) Consistent enforcement of appropriate discipline
- 7) Appropriate response to offense, and necessary program modifications

Directors should be proactive in requiring and implementing an effective program. For NYSE-listed companies, the proposed rules impose this burden on the Nominating and Governance Committee.

In implementing the OSG requirements, components of an effective program should include written policies, written code of conduct summarizing the policies and other important legal and compliance requirements, training systems, hotline, monitoring and auditing programs, and feedback to the board.

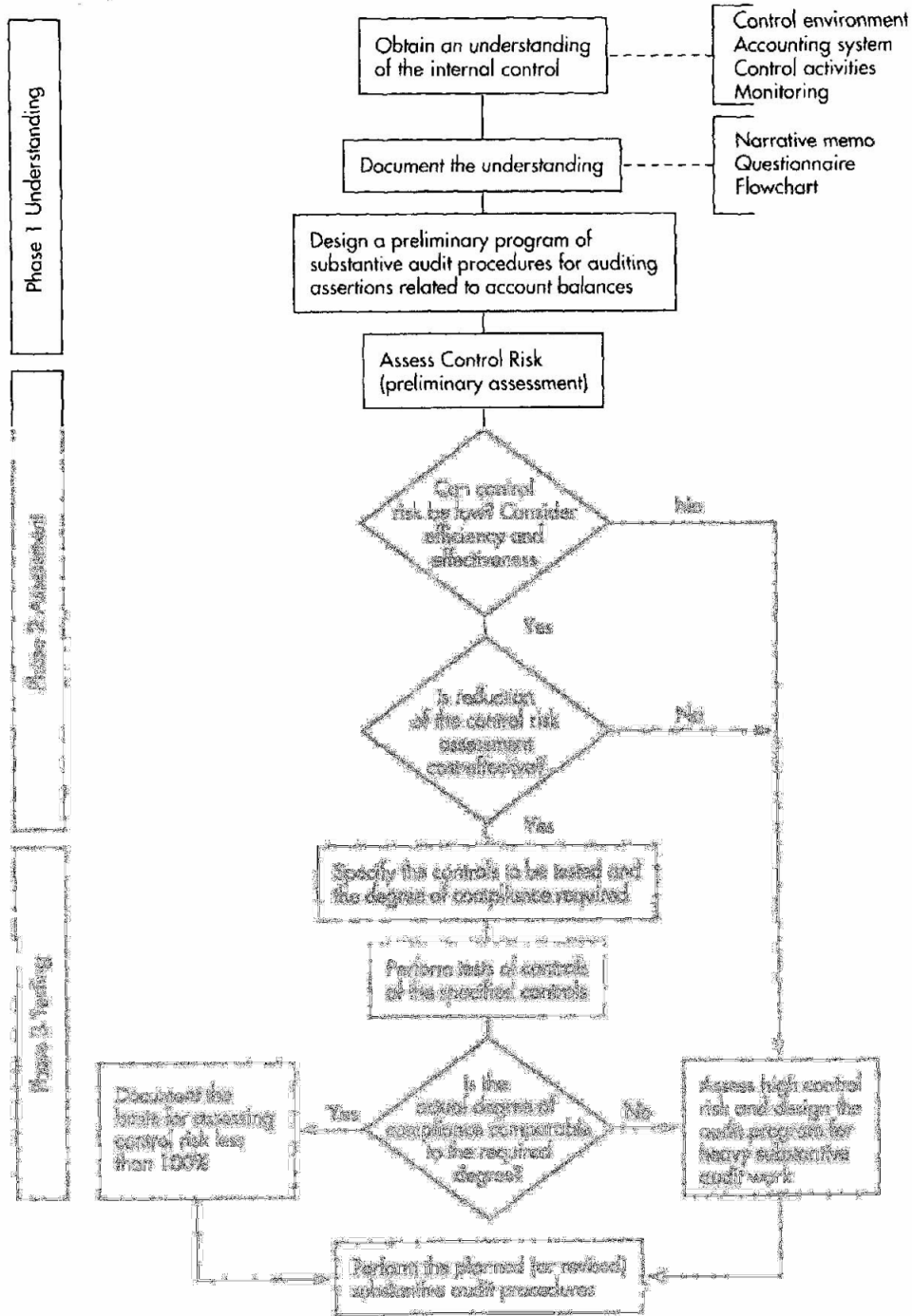
A careful reading of the proposed NYSE and NASDAQ listing requirements regarding corporate governance, as well as SEC proposed regulations, indicates that such an integrated “system” is advisable. A code of conduct, no matter how well written, requires complementary training, monitoring and auditing systems. Hotlines are a mandated part of an OSG-compliant system, and Section 301 of the Act requires a procedure for the “confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.”

A program can be effective only if a culture of compliance is established at the company. This requires that the CEO and other senior officers endorse and sell the program. Employees must understand that legal and ethical conduct is expected at all times, and that violations of laws or the company’s policies will result in discipline. Directors and officers are charged with ensuring employees comply with all “laws and regulations.”

Under the new governance and compliance regime, “the buck stops here” is no longer a platitude. Congress, the stock exchanges, and the U.S. Sentencing Commission have placed responsibility squarely on the shoulders of directors and officers. Responsible directors and officers will conclude that proactive establishment of an effective governance and compliance system makes good business sense and is the surest way to avoid the imposition of the numerous enhanced criminal penalties.

At the time of this writing, one of my two corporate clients (Alcoa) is undergoing a rigorous review against the requirements of this *Act*.

## SARBANES-OXLEY ACT – ASSESSMENT FLOWCHART



## **FOREIGN CORRUPT PRACTICES ACT (1977, 1988, 1998)**

### **EXECUTIVE BRIEF**

During the mid-1970s, investigations and administrative and legal actions against numerous domestic corporations revealed that some United States corporations had made questionable or illegal payments to foreign government officials. The legal and regulatory mechanisms for dealing with these payments had involved actions by the Securities and Exchange Commission (SEC) against public corporations for concealing the firms' substantial payments from required public disclosure. There was potential for an antitrust action for restraints of trade or fraud prosecutions by the Justice Department.

Government officials and administrators contended that more direct prohibitions on foreign bribery and more detailed requirements concerning corporate record keeping and accountability were needed to deal effectively with the problem. The revelations of slush funds and secret payments by American corporations were stated to have adversely affected American foreign policy, damaged the image of American democracy abroad, and reduced public confidence in the financial integrity of American corporations.<sup>1</sup> Congress responded with the passage of the Foreign Corrupt Practices Act of 1977.<sup>2</sup> The principal purpose of the 1977 Act was to prevent corporate bribery of foreign officials. It has three basic provisions to accomplish this purpose.

1. The Act amended section 13(b)<sup>3</sup> of the Securities Exchange Act of 1934<sup>4</sup> to require issuers that must register their securities with the SEC to keep detailed books, records, and accounts which accurately record corporate payments and transactions.
2. SEC registered issuers must institute and maintain an internal accounting control system to assure management's control, authority, and responsibility over the firm's assets.<sup>5</sup>
3. Domestic corporations, whether or not they are registered with the SEC, are prohibited from bribing a foreign official, a foreign political party, party official, or candidate for the purpose of obtaining or maintaining business.

Two provisions of The 1977 Act <sup>6</sup> provide criminal penalties for any American business which uses the mails or interstate commerce "corruptly" in furtherance of an offer or payment of money or anything of value to a "foreign official" or to a political party, party official, or candidate for foreign political office in order to influence the person in his decision-making or to use his influence to assist the firm in obtaining or retaining business.

The 1977 Act also prohibits the payment of money to any person by a business if the business knew or had reason to know that the payment was to be used to bribe a foreign official for his influence in obtaining or retaining business. Congressional intent appears to place responsibility on the corporation to exercise control over its officers, directors, and other employees and to take steps to ensure that its foreign agents are not using corporate assets or payments made to them to bribe foreign officials. <sup>7</sup>

Under the 1977 Act, Congress did not intend all payments to employees of foreign governments to be considered bribes. For example, the definition of "foreign official" excluded employees of a foreign government "whose duties are essentially ministerial or clerical." The legislative history of the Act specifically states that it was not intended to cover "grease payments" to foreign officials, explained as "payments for expediting shipments through customs or placing a transatlantic telephone call, securing required permits, or obtaining adequate police protection, transactions which may involve even the proper performance of duties."<sup>8</sup> The legislative history also suggests that extortions of money by foreign officials may be used as a defense against bribery charges by a business if its property or the lives of its employees have been threatened. An example used to illustrate acceptable payments was the payment to a foreign official to prevent the dynamiting of an oil rig.<sup>9</sup>

Almost since passage of the 1977 Act, there has been frequent criticism of its operation. Opponents have argued that "grey" areas of the law, where what is permitted may not be clear, have had a chilling effect on United States export trade because many companies have ceased foreign operations rather than face the uncertainties in the Foreign Corrupt Practices Act.

Some critics of the Act have contended that these provisions have cost up to \$1,000,000,000 annually in lost United States export trade.

Critics of the Act have argued for the enactment of precise and specific guidelines on what is prohibited and what particular conduct is permitted, instead of the vague standards of the 1977 Act, and have argued for precise statutory language to effectuate Congress's original intent to allow "grease" payments.

Critics of the 1977 Act also argued for the removal of the "reason to know" standard concerning liability for actions of a firm's agent in a foreign country. This would eliminate the legal responsibility of the management of a domestic firm over the unauthorized and undirected actions of an agent without the necessity for the corporate management to show that it had no "reason to know" that the agent was using corporate funds, payments, or commissions to bribe foreign officials. These critics argued that American firms should not have to bear the responsibility for the independent actions of persons they retained as agents in foreign countries.

Critics also contended that the internal accounting controls required by the 1977 Act were too costly and burdensome for domestic firms, especially when potential criminal penalties within the Act for failure to institute adequate controls made officials of firms overly and unnecessarily cautious in implementing costly accounting controls. The public record keeping requirements were also criticized as unduly burdensome. Critics of the Act argued for a materiality standard for public record keeping in which a firm would be required to report only expenditures and outlays deemed material to the profits and revenues of the firm.

Another frequent criticism of the 1977 Act was that the United States was more interested in exporting its cultural biases than its products. It was argued that, in nations in which acceptance of a fee or payment by a government official from one doing business with the government is customary and not unlawful under the laws of that nation, such payment should not be deemed to be a violation of a United States law.

Critics also argued that an international agreement among the world's industrialized nations prohibiting businesses of all those countries from bribing foreign officials was necessary to prevent businesses of other countries from gaining an unfair and harmful competitive advantage over American businesses.

In response to these criticisms, Congress considered amending the 1977 Foreign Corrupt Practices Act, although it had still not done so after a number of years of intense lobbying.

After a great deal of debate through at least three Congresses, the Foreign Corrupt Practices Act Amendments of 1988 were signed into law as Title V of the Omnibus Trade and Competitiveness Act of 1988 <sup>10</sup> on August 23, 1988. Although the amendments maintained the three major parts of the 1977 Act discussed above – the accounting standards, the requirements of SEC registered issuers, and the anti-bribery provisions – the 1988 Amendments made some significant changes in the 1977 Act.

Section 5002 of the Trade Act amends section 13(b) of the Securities Exchange Act to provide that no criminal liability shall be imposed for violation of the accounting standards unless a person knowingly circumvents or knowingly fails to implement a system of accurate and reasonable accounting controls. According to the legislative history, this provision is intended to ensure that criminal penalties would be imposed where acts of commission or omission in keeping books or records or administering accounting controls have the purpose of falsifying books, records, or accounts or of circumventing the accounting controls. This is also intended to include the deliberate falsification of books and records and other conduct calculated to evade the internal accounting controls requirement.<sup>11</sup>

Section 5002 of the Trade Act also adds to section 13(b) of the Securities Exchange Act a provision that an issuer that holds 50% or less of the voting power of a domestic or foreign firm is required to use its influence only in good faith to cause the domestic or foreign firm to devise and maintain a system of acceptable accounting controls.

The House Report states that this amendment is intended to recognize that it is unrealistic to expect a minority owner to exert a disproportionate degree of influence over the accounting practices of a subsidiary.<sup>12</sup>

For purposes of the accounting standards, "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs. Thus, the "prudent man" qualification was adopted to clarify that the current standard does not require an unrealistic degree of exactitude or precision.

Section 5003 of the Trade Act amends the provisions of the Foreign Corrupt Practices Act, which concern the anti-bribery prohibitions by issuers and domestic concerns.

It remains prohibited for any issuer that has a class of securities registered with the Securities and Exchange Commission or for any officer, director, employee, or agent of the issuer or any stockholder acting on behalf of the issuer or for any United States concern to make use of the mails or other means of interstate commerce to offer, pay, promise to give, or authorize the giving of anything of value to a foreign official, a foreign political party, party official, candidate, or any person for the purpose of obtaining or maintaining business. Section 5003 amended the 1977 Act to prohibit payments to any foreign official for the purpose of "influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official." This language was inserted so that the foreign bribery standard would conform to the domestic bribery standard found in 18 U.S. C. section 201.<sup>13</sup>

The "knowing" requirement is retained, and the "recklessly disregarding" standard was abandoned in conference. However, the "knowing" requirement is intended to encompass the "conscious disregard" and "willful blindness" standards, including a conscious purpose to avoid learning the truth.

The Conferees agreed that "simple negligence" or "mere foolishness" should not be the basis for liability. However, the Conferees also agreed that the "head-in-the-sand" problem – variously described in the relevant authorities as "conscious disregard," "willful blindness" or "deliberate ignorance" – should be covered so that management officials could not take refuge from the Act's prohibitions by their unwarranted disregard of any action (or inaction), language or other "signaling device" that should reasonably alert them of the "high probability" of an FCPA violation.<sup>14</sup>

The major changes which section 5003 of the Trade Act make in the 1977 Foreign Corrupt Practices Act have to do with when the bribery provisions become operative to an American business or person acting on behalf of an American business. For example, the anti-bribery provisions shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official if the purpose is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

Further, an American business or individual may use one of the "affirmative defenses" in urging that no violation of the FCPA has occurred. The first of these enumerated affirmative defenses is that the payment, gift, offer, or promise of anything of value that was made was lawful under the written laws and regulations of the foreign official's, political party's, party officials, or candidate's country.

Another affirmative defense is that the payment, gift, offer, or promise of anything of value that was made was a reasonable and bona fide expenditure, such as travel and lodging expenses which were incurred by or on behalf of a foreign official, party, party official, or candidate, and was directly related to the promotion, demonstration, or explanation of products or services or the execution or performance of a contract with a foreign government or agency. This defense would not apply, however, if a payment or gift were corruptly made in return for an official act or omission because it would then not be a bona fide payment.

The Attorney General, after consulting with certain named other federal officials, is required to issue guidelines which describe specific types of conduct which would fit within both the affirmative defenses and the general precautionary procedures which issuers may use in order to comply with the amendments. The Attorney General is also required to issue an opinion within thirty days of a request to provide a response to a specific inquiry by an issuer concerning the conformance of its conduct with Department of Justice guidelines.

In the definitional sections of the amendments, the terms "knowing" and "routine governmental action" are especially important. A person's state of mind can with respect to conduct, a circumstance, or a result, if that person is aware of engaging in the conduct, that the circumstance exists, or that the result is substantially likely to occur or if the person has a firm belief that the circumstance exists or that the result is substantially likely to occur. When knowledge of the existence of a particular circumstance is required for an offense, the knowledge is established if a person is aware of a high probability of the existence of the circumstance unless the person actually believes that the circumstance does not exist.

"Routine governmental action" is only ordinarily and commonly performed by a foreign official in obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country; processing governmental papers; providing police protection, mail pick-up and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country; or providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration. The term does not include any decision by a foreign official as to whether or on what terms to award new business to, or to continue to do business with, a particular firm.

The amendments also increased penalties for violations of the Foreign Corrupt Practices Act. The maximum criminal fine for a firm or domestic concern was raised from \$1,000,000 to \$2,000,000 and for individuals from \$10,000 to \$100,000. The maximum potential imprisonment for an individual remained at five years. There was also a new civil penalty of \$10,000.

One of the continuing criticisms of the FCPA was that American businesses were at a disadvantage in obtaining business abroad because many of the other industrialized nations do not have severe penalties for bribing foreign officials. Over the years there has been a considerable amount of international interest in standardizing bribery statutes. In particular, the Organization for Economic Cooperation and Development (OECD) has given a great deal of attention to this issue. The OECD permits governments, primarily those of industrialized democracies, to study and formulate policies concerning economic and social issues. In Paris on November 21, 1997, negotiators from the twenty-nine OECD member states<sup>15</sup> and five other countries<sup>16</sup> adopted a Convention on Bribery of Foreign Public Officials in International Business Transactions (Convention). A signing ceremony was held in Paris on December 17, 1997.

In many ways the OECD Convention on Bribery is very similar to the Foreign Corrupt Practices Act. However, there were a few differences which necessitated changes in the FCPA in order for the FCPA to conform with the OECD Agreement. In the 105th Congress these needed changes were enacted as P.L. 105-366.

P.L. 105-366 revised the Securities Exchange Act of 1934 and the FCPA to prohibit conduct intended to obtain improper advantages from foreign officials by securities issuers, officials of international organizations, and domestic concerns. It redefined "foreign official" to include an official of a public international organization. It declared that it is unlawful for any issuer organized under United States laws to commit specified prohibited acts outside the United States. It also amended the FCPA to prohibit specified foreign trade practices by a covered person or any officer, director, employee, agent, or stockholder of the covered person while in United States territory.

At the time of this writing, I have no current clients who have undergone or are undergoing an investigation to this *Act*.

## **FOREIGN CORRUPT PRACTICES ACT – SELF ASSESSMENT**

The Deputy Defense Minister of a country with which the company has done business before informs you that he would like to visit company facilities in the U.S. Before you invite him and his party, which includes his spouse and two aides, to fly first class and to be your guests in California where you visit company headquarters, manufacturing facilities and Disneyland, a number of questions must be answered.

- 01) Can you extend the invitation without involvement of any other level of management?
- 02) Are such trips permitted under the FCPA?
- 03) Are there conditions attached?

After getting appropriate approvals, you arrange for the Minister and his party to stop in Washington, DC, for two days on the way.

- 04) Is such a stop permitted if it is unrelated to company business?
- 05) Is such a stop permitted if it is related to company business?
- 06) Are there guidelines for the entertainment offered?

At dinner that evening in Washington, you present the Minister with an expensive crystal American eagle.

- 07) Would such a gift be considered legal under U.S. law?
- 08) If legal under U.S. law, does that settle the matter?

Two American nationals recently assigned to report to you in the company office in a foreign capital try to get driver's licenses immediately after arriving. The government licensing office tells them it could take three months and the penalties for driving without a license can be severe. However, they are told that for a fee of \$5000, instead of the normal \$75 each, the process could be expedited and the licenses could be available in three days. Is this:

- 09) A permissible exception to the FCPA?
- 10) A bribe?
- 11) Is there a clearly defined line between a facilitating payment and a bribe?
- 12) Must facilitating payments of \$50 or less be documented in company books?

(Answers: *See Appendix A*)

## CONCLUSION ON SITUATIONAL ETHICS

### Conclusion:

Originally, this research paper was launched to provide the reader with a light-hearted look at international ethics. Situations in which the readers might find themselves (e.g. accepting gifts, going out for meals, making corporate donations, etc.) have not been covered in detail.

However, when I began to research the topic more deeply, I quickly discovered that there is an almost endless supply of anecdotes and a nearly non-existent source of precise definitions or rules of ethics. When one adds the additional international perspective one becomes lost in a maze of situational variations.

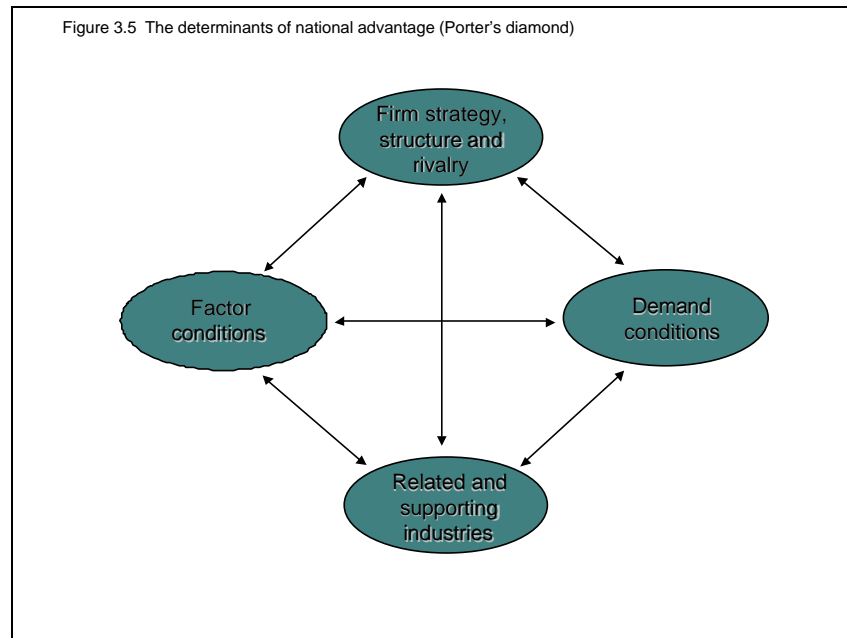
With this in mind, I began to focus the research on the work of such respected writers as Porter and the legal sense of ethics and of ethical behavior. Once I had narrowed the topic to the legal professional and then to the United States, the picture became much clearer.

The two most far-reaching and significant *Acts* within the scope of this research paper have included the Foreign Corrupt Practices Act (1977) and the Sarbanes-Oxley Act (2002). These two *Acts* (among others) have defined the topic of ethical behavior within the United States.

What I have come to conclude about international ethics, from a legal standpoint, is that the business world does not define the topic of ethics in the same way. The closest the business world comes is “situational ethics” or the concept of local rules and regulations. When in Rome, do as the Romans do – fortunately, the OECD has implemented similar legislation.

Individuals and corporations seeking to become competitive in the global marketplace will need to adhere not only to the local laws but also to the laws of their country of origin. For some countries, walking this path will be a complicated undertaking.

According to Porter, the following are the conditions, which provide the pressures on firms to invest and innovate and thus remain competitive. The Competitive Diamond follows:



Porter's model outlines four broad attributes of a nation that shape the environment in which local firms compete that promote or impede the creation of competitive advantage:

- factor conditions
- demand conditions
- related & or supporting industries
- firm strategy, structure and rivalry

Two additional factors can also affect the model:

- chance
- government

This paper has focused on the last of these additional factors – government – particularly in the form of the two legislative *Acts*.

## INTERNATIONAL ETHICS – WEB SITES

### Web Sites:

<http://www.ethics.org/>

<http://www.globalethics.org/>

<http://www.business-ethics.com/>

<http://www.usoge.gov/>

<http://www.business-ethics.org/>

<http://www.interact2001.com/business-ethics.shtml>

## INTERNATIONAL ETHICS – CITATIONS

### Citations:

*Sarbanes–Oxley Act (2002)*

Ref: Mr. Dick Clayton, Partner Holland & Hart LLP

*Foreign Corrupt Practices Act (1977)*

Ref: Mr. Michael V. Seitzinger, Legislative Attorney, American Law Division

*The Competitive Advantage of Nations*

By: Michael Porter, Free Press, 1998

## FOOTNOTES

01. See S.Rept. 95-114, 95th Cong., 1st Sess., at 3 (1977)
02. P.L. 95-213, Title 1; 91 Stat. 1494, Dec. 19, 1977.
03. 15 U.S.C. § 78ni (b).
04. 15 U.S.C. §§ 78a et seq.
05. 15 U.S.C. § 78m (b) (2) (B).
06. 15 U.S.C. §§ 78dd-1 and 78dd-2.
07. S.Rept. 95-114, at 1
08. S.Rept. 95-114, at 10
09. S.Rept. 95-114, at 10-11.
10. P.L. 100-418, 102 Stat. 1107.
11. H.Rept. 100-576, 100th Cong., 2d Sess., at 916-917 (1988)
12. H.Rept. 100-576, at 917
13. H.Rept. 100-576, at 918
14. H.Rept. 100-576, at 920
15. OECD member countries are Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, New Zealand, The Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.
16. Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic.

## **APPENDIX A – FCPA SELF ASSESSMENT ANSWERS**

- 01) No. Don't proceed without involving your senior management.
- 02) They may be.
- 03) Yes. They must be reasonable and directly related to the promotion, demonstration or explanation of products or services or the execution or performance of a contract.
- 04) No.
- 05) Yes, subject to the expenses being reasonable.
- 06) Yes. Reasonable, customary, directly related to business.
- 07) It could be. Get a legal opinion or contact your superior.
- 08) No. Consult the laws of the visitor's country and your internal, Policies, Procedures and Standards of Business Conduct.
- 09) No.
- 10) The difference between \$150 and \$5000 makes it difficult to categorize it otherwise.
- 11) No. It's a judgment call. Small amounts of money for routine (non-discretionary) government services are generally considered allowable facilitating payments.
- 12) Yes.