

The Three Questions



The Foreign Corrupt Practices Act (FCPA) is a US law aimed at prohibiting bribery of foreign officials. The FCPA and related guidance can be broken down into three fundamental questions:

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Are you dealing with a Foreign Official?

“Foreign Official” is defined very broadly under the FCPA. Examples include, but are not limited to Officers, employees, or anyone acting in an official capacity of:

- A non-US government or any subsidiary departments, agencies, state-owned or state-controlled enterprises or instrumentalities
- A public international organization (e.g., the United Nations or the World Bank)
- Non-US public educational institutions
- Non-US public pension, investment, or sovereign wealth funds
- Representatives or officials from any non-US political party and candidate for any non-US political office
- Members of royal families
- Anyone acting on behalf of any of the preceding

The ownership or control of the entity is important too – many foreign companies are owned or controlled in part by foreign governments – and the details can be complex.



Are you providing Anything of Value?

“Anything of Value” includes anything having value or benefit, whether tangible or intangible, including, but not limited to:

- Money or cash
- Travel and travel-related expenses
- Hospitality and entertainment, including meals (includes events sponsored by the US Firms)
- Gifts or other goods or services
- Political contributions
- Donations to charitable organizations
- Stock and other investment opportunities
- Employment or scholarships
- Confidential information that confers potential benefit
- Waivers of rules that would normally apply
- Preferential treatment



Is there Corrupt Intent – real or perceived?

The FCPA prohibits exchanging anything of value—or attempting to do so—with a Foreign Official to obtain, or retain, business or to receive a business benefit. Intent matters under the FCPA. If it appears that you offered, promised, authorized, or gave “Anything of Value” for a business advantage or to secure a deal, it can be inferred that you had corrupt intent.

It’s a regulator’s perspective that will ultimately matter – how your behavior looks from the outside can be more important than what you may have actually intended.

Still need help?

When in doubt, reach out. Ask Deloitte’s [Anti-Corruption & Trade](#) group for help if you’re unsure about any of these questions.

