

# THE REVIEW OF SECURITIES & COMMODITIES REGULATION

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS  
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 51 No. 10      May 23, 2018

## T, G, AND E UNDER THE FCPA: HOW MUCH IS TOO MUCH?

*The acceptable limits of travel, gifts, and entertainment of foreign officials under the FCPA are not always clear. The authors discuss the parameters of what the law allows, focusing for guidance on the Department of Justice Resource Guide and its Opinion Releases. They close with lists of best practices to avoid FCPA charges, including for charitable donations.*

By Lawrence D. Finder and Lindsay Wright Brett \*

Exploit-US is a large U.S. oil field services company with operations in 78 countries. Exploit-US wants to expand its presence to include the People's Republic of Brybistan, a small Baltic country, and perform oilfield service work for its national oil company (the Brybistan National Oil Company, "BNOC"), which is 100% owned, controlled, and operated by the government. BNOC's employees are subject to Brybistan's domestic bribery laws, although the country is not a member nation of the Organization of Economic Co-operation and Development ("OECD"). Exploit-US's representatives visit the BNOC offices and make a presentation to various BNOC officials about its services and offerings. At the conclusion of the presentation, the Exploit-US representatives freely hand out paperweights, flash drives, stress balls, and ballistic nylon brief bags emblazoned with its logo. Later that evening, Exploit-US invites many of the BNOC officials to a "get-to-know-you" cocktail hour at the single five-star hotel in the Brybistan capital of Skruya, and pays for

the BNOC employees' food, beverages, and taxi rides home.

BNOC becomes interested in Exploit-US's operations and would like to see its operations in action before it considers hiring Exploit-US. Exploit-US invites 12 BNOC officials, selected by BNOC, to the United States and pays for business-class, round-trip airfare on WorldWide Airlines from Skruya to Houston, hotels, and ground transportation for the BNOC officials and their spouses. Business-class travel on international trips comports with Exploit-US's policies for its own employees. Exploit-US also makes sure every BNOC official has a welcome basket in their hotel room to welcome them to Houston, including a bottle of Texas hill country wine.

Exploit-US hosts the BNOC officials for several days in its Houston offices, including taking them (and their spouses) to dinners, to a local art museum, and to see a performance by the Baltic Straits, a local Dire Straits cover band.

---

\* LAWRENCE D. FINDER is a partner in the Litigation and Government Enforcement practice group at Baker & McKenzie LLP. LINDSAY WRIGHT BRETT is a senior associate in the same practice group. Their e-mail addresses are [lawrence.finder@bakermckenzie.com](mailto:lawrence.finder@bakermckenzie.com) and [lindsay.brett@bakermckenzie.com](mailto:lindsay.brett@bakermckenzie.com).

---

---

### INSIDE THIS ISSUE

- **STRUCTURING OPTIONS FOR RETAIL CRYPTO FUND PRODUCTS, Page 117**
- **CLE QUESTIONS, Page 121**