



EMEREN GROUP LTD
FOREIGN CORRUPT PRACTICES ACT
COMPLIANCE PROGRAM
AND MANUAL

Group CEO *Jumin Liu*

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**EMEREN GROUP LTD
FOREIGN CORRUPT PRACTICES ACT
COMPLIANCE PROGRAM AND MANUAL**

1. INTRODUCTION

1.1 Authorization

This Foreign Corrupt Practices Act Compliance Program and Manual (the "Manual") is being issued at the specific direction of the Emeren Group LTD. ("Emeren Group") Board of Directors (the "Board").

1.2 Purpose

The purpose of the Manual is to provide all employees, officers, directors, and representatives of Emeren Group Ltd and its subsidiaries (the "Company") with all resources necessary to enable, monitor and enforce the Company's full compliance with the United States Foreign Corrupt Practices Act ("FCPA").

2. CORPORATE POLICIES

2.1 FCPA Policy Statement

Emeren Group has adopted a policy on compliance with the United States Foreign Corrupt Practices Act (the "Policy"). The Policy, which is attached as Annex A to this Manual, applies to the Company and all employees, officers, directors, and representatives of the Company.

2.2 Code of Business Conduct and Ethics

The Policy and this Manual supplement the Emeren Group Code of Business Conduct and Ethics ("Code of Conduct") adopted by the Emeren Group Board of Directors in January 2008. All provisions of the Code of Conduct, which is attached as Annex B to this Manual, remain fully effective.

2.3 FCPA Compliance Program and Manual

The FCPA Compliance Program ("Compliance Program") described in this Manual ("Manual") is intended to facilitate the implementation of the Policy and provide detailed guidance and procedures which will allow all Company employees, officers, directors, and representatives to efficiently and effectively carry out the Policy's requirements and objectives. The Manual will be periodically reviewed by the Board and appropriate amendments will be issued as often as necessary.

3. ADMINISTRATION OF COMPLIANCE PROGRAM

3.1 Board of Directors

The Board has specifically directed the issuance and implementation of the Policy and the Compliance Program described in this Manual and retains ultimate responsibility for ensuring that the Company meets its obligations under the FCPA. The Board has delegated certain responsibilities for the administration of the Compliance Program to its Audit Committee ("Audit Committee") and certain officers of the Company.

3.2 Audit Committee

The Audit Committee is charged with responsibility for:

- (a) Overseeing the administration of the Compliance Program;
- (b) Evaluating and recommending to the Board possible amendments to the Compliance Program;
- (c) Reviewing the findings of the Emeren Group the Compliance Officer regarding possible violations of the Policy or the Compliance Program;
- (d) Undertaking an independent investigation of possible violations of the Policy or the Compliance Program; and
- (e) Reporting to the Board at least quarterly on the status of the Company's compliance with the Policy and the Compliance Program.

3.3 Compliance Officer

The Emeren Group Compliance Officer has responsibility for:

- (a) Daily administration of the Policy and the Compliance Program;
- (b) Coordination of FCPA education and training as required by the Compliance Program;
- (c) Administration of the FCPA Compliance Program hot-lines;
- (d) Administration of the Code of Conduct Annual Certification program;
- (e) Receiving and responding to questions, reports, and/or complaints regarding adherence to the Policy and the Compliance Program, after consultation with the Emeren Group and the Audit Committee where appropriate;
- (f) Immediately reporting to the Emeren Group Audit Committee of any material violations of the Policy or the Compliance Program that appear to have occurred;
- (g) Reporting to the Audit Committee at least quarterly on the status of the Company's compliance with the Policy and the Compliance Program and any

practical issues that have arisen in connection with the administration of the Policy or the Compliance Program.

The Emeren Group Compliance Officer is authorized to communicate directly with the Audit Committee at any time. The compliance officer may seek internal /external legal counsel's advice when necessary.

3.4 Internal Auditors

The Emeren Group Internal Audit Department will assist with enforcement of the Policy and the Compliance Program by routinely and regularly included in the internal audit process questions and reviews designed to test and verify compliance with the Policy and the Compliance Program and by otherwise assisting the Compliance Officer with the administration of the Compliance Program as required from time to time. Each Emeren Group Internal Auditor will immediately notify the Emeren Group Compliance Officer, the Emeren Group the Audit Committee, as appropriate, when any credible indication of a failure to comply with the Policy or the Compliance Program comes to his or her attention.

3.5 Hot Line Programs

The Company will maintain telephone, electronic mail, postal mail, and hot-lines dedicated to direct communication with the Emeren Group Compliance Officer regarding the Policy and the Compliance Program. All Company personnel will be made aware of the existence and availability of the hotlines. All Company personnel is encouraged to report any potential violation of the Policy or the Compliance Program via one of the hotlines. Reports may be made anonymously if so desired. There will be no reprisal for the submission of any information or report that is submitted in good faith.

The Emeren Group Compliance Officer is Chris Wang

The current Compliance Program hotline is:

Email: Xin.wang@Emeren.com or internalcontrol@Emeren.com

TEL: [+86 13611778154](tel:+8613611778154)

3.6 Annual Certifications

All certifications requested by Emeren Group will contain the following additional language, which is set out in the Code of Conduct:

"The undersigned hereby certifies that he or she has read and understands the Company's Policy on Compliance with the United States Foreign Corrupt Practices Act and the October 2012 Edition of the Company's Foreign Corrupt Practices Act and Compliance Manual. The undersigned further certifies that, after due inquiry and investigation, he or she is not aware of any fact or circumstance that indicates that a violation of the Policy or the Compliance Program described in the Manual has occurred during the

period covered by this Certificate. The undersigned further certifies that he or she fully understands that a false or incomplete statement in this Certificate will be grounds for immediate dismissal from employment."

The foregoing certification will be required from all Company management and accounting personnel, as determined by Compliance Officer, including all persons who have access to Company funds or who have responsibility for recording transactions that impact the Company's books and records.

4. EXPLANATION OF LAWS

4.1 Scope of the United States Foreign Corrupt Practices Act

The FCPA has two basic requirements that may be summarized as follows:

(a) Persons and entities covered by the FCPA may not corruptly pay, offer to pay, or give anything of value to any foreign government official, foreign political party or foreign political candidate, any public international organization official, or any other person with the knowledge that the payment, promise, or gift will be passed on to any of the foregoing, to influence an official act or decision that will assist the covered person or entity in securing an improper advantage, in obtaining or retaining business or in directing business to any other person or entity; and

(b) Entities whose securities are publicly traded in the U.S. are required to make and keep accurate books and records in reasonable detail and to devise and maintain a reasonable system of internal controls.

A copy of the full text of the FCPA, as amended, is attached as Annex C to this Manual. In addition, an explanation of the FCPA provided on the U.S. Department of Justice website is attached as Annex D to this Manual.

4.2 Key Definitions

For purposes of the Policy and this Manual, the following terms as used in this Manual or the FCPA should be considered to have the meanings indicated below:

(a) "foreign official" means any officer or employee of a government outside the United States or any department agency, or instrumentality thereof, a public international organization, or any person acting in an official capacity for or on behalf of any government or department, agency or instrumentality, or for or on behalf of any such public international organization; this also applies to officials or employees of State Owned Enterprises (SOEs).

(b) "public international organization" means an organization that is so designated by the President of the United States and generally

includes organizations such as the International Monetary Fund, the European Union, the World Bank, and similar organizations;

(c) "knowledge" means the state of mind which exists when a person knows or is substantially certain that a particular fact or circumstance exists or will exist or when a person consciously disregards or is deliberately ignorant of information that indicates a high probability that a particular fact or circumstance exists or will exist;

(d) "corruptly" means taking an action intentionally and voluntarily to cause conduct that is prohibited by the FCPA; and the "routine governmental action" does not include any decision by a foreign official to award new business or to continue business with a particular party.

5. EDUCATION AND TRAINING

5.1 Frequency and Participation

The Emeren Group Compliance Officer will conduct or arrange for FCPA training sessions to be conducted at all major Company offices and work locations throughout the world at least annually. Attendance at not less than one such training session each year shall be required for all Company management and accounting personnel, including the Board ("Required personnel").

Particularly, newly on-board required personnel will take training sessions within 30 days from his/her on-board date. Normally the annual training is to be held at each year's end and personnel on-boarded before June 30 are required to attend the year-end training session as well.

5.2 Scope of Training

Training sessions conducted under this Manual shall include written and oral presentations regarding FCPA requirements, the Policy, and the procedures detailed in this Manual, as well as group question and answer sessions and the opportunity for one-on-one discussions if requested.

5.3 Form of Training

Training will be held in the form of online training and/or classroom training, and a test should be taken by each trainee immediately after the training session.

6. CONTROL PROCEDURE

6.1 DUE DILIGENCE PROCEDURES

6.1.1 Acquisitions

Whenever the Company pursues the acquisition of any business entity, the due diligence process associated with the proposed acquisition shall include an investigation of the acquisition target's compliance with the FCPA. The specific information to be obtained in connection with such investigation shall be specified by, and the written results of such investigation shall be reviewed and approved by, the Emeren Group Compliance Officer.

For the detailed procedure steps of doing Due Diligence that must be followed to comply with the FCPA Due Diligence Procedures, Please refer to Annex H.

6.1.2 Joint Ventures

Whenever the Company elects to pursue work outside the United States through a joint venture, a review of the prospective joint venture partner or partners to determine the reputation, beneficial ownership, professional capability, financial standing, credibility and history of such prospective joint venture partners' compliance with applicable provisions of the FCPA or similar applicable legislation in other countries shall be conducted. The specific information to be obtained in connection with such investigation shall be specified by, and the written results of such investigation shall be reviewed and approved by the Emeren Group Compliance Officer.

6.1.3 Consultants, Agents, Sponsors, and Other Representatives

Whenever the Company intends to engage or retain a consultant, agent, sponsor, or other independent third-party representatives in connection with any business being sought or transacted outside the United States, an investigation of the prospective representative to determine the reputation, beneficial ownership, professional capability and experience, financial standing and credibility of the prospective representative and the history of such prospective representative's compliance with applicable provisions of the FCPA or similar applicable legislation in other countries shall be conducted. The specific information to be obtained in connection with such investigation shall be specified by, and the results of such investigation shall be reviewed and approved by, the Emeren Group Compliance Officer. Key information shall be recorded in a written report or questionnaire which shall be certified as correct by the relevant prospective representative. When the Compliance Officer deems it necessary, the investigation shall include an interview of the prospective representative by a designee of the Compliance Officer.

6.1.4 Red Flags

One of the key aspects of FCPA-Related due diligence investigations is the identification of "red flags" which may indicate the potential existence

of an FCPA problem. The FCPA "red flags" identified by the U.S. Justice Department are described in Annex E. All due diligence investigations conducted by the Company will include an analysis of potential "Red Flag" issues.

6.2 PROHIBITED AND RESTRICTED PAYMENTS

Although on its face the FCPA appears to be a fairly simple statute, in practice, it can be quite complex. The law recognizes that companies must interact with foreign officials in many ways to conduct business, and establishes guidelines for acceptable and unacceptable behavior in those interactions. Compliance with those guidelines, which are the basis for Emeren Group's policies, requires vigilance on the part of all Emeren Group employees.

The FCPA prohibits the offer, promise, authorization, or payment of a bribe or "anything of value" to a "foreign official" to secure improper influence over official actions that affect Emeren Group. This prohibition is very broad, and covers: (1) cash payments; (2) non-cash "payments," benefits, and favors; and (3) in certain circumstances, otherwise legitimate expenditures such as gifts, entertainment, and hosted travel or training. The FCPA prohibits these payments whether they are made directly or indirectly through third parties, such as consultants, agents, and joint venture partners.

6.2.1 Interactions with "Foreign Officials"

The FCPA applies to interactions with "foreign officials." For purposes of this Policy, a "foreign official" means any officer or employee of a foreign government (i.e., other than the United States) or any department, agency, or instrumentality thereof, or of a "public international organization," any person acting in an official capacity for/on behalf of a foreign government or government entity or of a public international organization, any foreign political party or party official, or any candidate for foreign political office. Thus, foreign officials include not only elected officials, but also consultants who hold government positions, employees of companies owned by foreign governments, political party officials, officials of public international organizations, and others.

"Foreign officials" also include spouses and other immediate family members of foreign officials under this policy. Enforcement officials will treat payments to dependents of officials the same as payments directly to the officials themselves. Payments to other relatives must also be scrutinized in advance, and safeguards imposed, to protect against the risk that the relatives could act as conduits to the official.

Critical to Emeren's business is the very broad definition under U.S. law of "Instrumentalists" which includes state-owned or controlled companies and other such companies. In many instances, employees of such companies are not treated or thought of as government officials in their home country. Under the FCPA, however, they are "foreign officials." Any questions relating to

whether an individual is a "foreign official" should be directed to Emeren Group's Compliance Officer.

The term "public international organization" includes such organizations as the United Nations, the World Bank, the International Finance Corporation, the International Monetary Fund, and the Inter-American Development Bank. Emeren Group's Compliance Officer should be contacted if there is a question as to whether an organization should be treated as a public international organization for this Policy.

6.2.2 Cash and Non-Cash Payments: "Anything of Value"

Requests by foreign officials for payments that would violate the FCPA arise in varied settings and can be much more subtle than a direct request for a kickback or bribe. The FCPA prohibits the provision of "anything of value" to a foreign official for improper purposes. This term is very broad and can include any item of pecuniary value, including, for example:

- Gifts
- Gift or sale of stock or other investment opportunities other than an arm's length transaction for demonstrated fair market value, e.g. selling to an official at inflated prices or buying from an official at deflated prices
- Contracts or other business opportunities awarded to a company in which a foreign official holds a beneficial interest
- Medical, educational, or living expenses
- Travel, meals, lodging, shopping, or entertainment expenses

6.2.3 Prohibited Payments

As a practical matter, past enforcement actions have shown that the FCPA's prohibition against improper payments to "obtain or retain business" or to "secure any other improper advantage" which covers virtually any improper payment made in a business context. For example, Emeren Group employees and agents must not pay or give things of value to foreign officials, directly or indirectly:

- To obtain an interest in a block or otherwise to acquire exploration or production interests;
- To prevent some governmental action, such as the imposition of a large tax or fine, or the cancellation of an existing government contract or contractual obligation;
- To obtain a license or other authorization from a government (such as the right to import goods and equipment) where the issuance involves the foreign official's or his/her government's discretion;
- To obtain confidential information about business opportunities, bids, or the activities of competitors;

- To obtain the right to open an office, to secure a zoning ruling, or to influence the award of a government contract;
- To influence the rate of taxes that would be levied on Emeren Group's business;
- To obtain relief from government controls;
- To resolve governmental disputes, e.g., the resolution of tax deficiencies or a dispute over duties payable;
- To resolve commercial litigation in foreign courts;
- To affect the nature of foreign regulations or the application of regulatory provisions; or
- To secure any improper advantage.

6.2.4 Guidelines for Common Risk Areas

The FCPA does not prohibit all payments to or on behalf of foreign officials. Under an affirmative defense to the FCPA, certain payments that are directly related to (i) the promotion or demonstration of Emeren Group's products or services; or (ii) the performance of a particular Emeren Group contract with a foreign government or instrumentality, may be permissible.

To be consistent with the FCPA and Emeren Group policy, such payments must be bona fide, reasonable, fully documented, supported by original receipts, accurately recorded in Emeren Group's books and records, and properly approved in advance by the Compliance Officer or Emeren Group's CFO, as described below. Emeren Group's approval process will consider not only the legal risks but also, the public relations and business risks, that any proposed payment may present.

Because of the FCPA's strict prohibitions, Emeren Group personnel should not make or authorize any gift, payment, or offer of anything of value to any foreign official, whether on the local, regional, or national level, unless approved under this Policy. This Guide specifically outlines the very limited circumstances – modest entertainment, meals, Emeren Group promotional items, gifts of a nominal value, and other business courtesies -when items of value can be given to foreign officials. Such entertainment, meals, Emeren Group promotional items, gifts of a nominal value, and other business courtesies may not be made except under this Guide and unless the Compliance Officer has provided the approvals required in the Guide.

Emeren Group personnel must complete the “Pre-Approval Form” (the “Request Form”) and submit it to the Country Director, the Chief Finance Officer, and the Chief Executive Officer before (1) making a payment or giving anything of value to a “foreign official;” or (2) making a charitable contribution outside of the US or Canada. There are a limited number of

situations where a Request Form is not required, and these are discussed below. Of course, in all cases, any expenses must be fully and accurately described in Emeren Group's books and records.

6.2.4.1 Gifts to and Entertainment of Foreign Officials

Gifts can be provided to foreign officials only to the extent that they meet the criteria and approval requirements outlined in this section. Gifts of Emeren Group promotional items do not require prior written approval from the Compliance Officer. Emeren Group promotional items are: (1) corporate gifts with the Emeren Group logo; and (2) event tickets (i.e. sporting, concert, or rodeo tickets) that are regularly purchased by Emeren Group for the use of its clients and employees (special purchases of tickets will still require pre-approval.) Even though a Request Form is not required, the value of a gift and the recipient(s) must be properly recorded in Emeren Group's books and records.

Meals for foreign officials do not need prior written approval from the Compliance Officer and should not exceed generally considered a reasonable business courtesy.

Meals are reasonable when they are limited social invitations that are given to numerous foreign officials/business partners, and that do not carry business obligations or present potential for embarrassment. Generally, meals with a per-person value of less than US \$100.00 would be considered reasonable. A copy of the employee's expense report showing the (itemized) value of the meal (or other appropriate documentation) as well as the recipients must be recorded properly in Emeren Group's books and records.

Expenses relating to gifts or meals given to foreign officials must be:

- ☞ Directly related to the promotion, demonstration, or explanation of Emeren Group's products or services or the execution or performance of a contract with a foreign government, agency, or instrumentality thereof;
- ☞ Abide by the written foreign country's laws, rules, regulations, or business policies (many foreign ministries or agencies or public international organizations have separate hospitality rules);
- ☞ Provided for a purpose other than to induce a foreign official to misuse his/her official position;
- ☞ Certain not to create the appearance of being an improper payment or a conflict of interest;
- ☞ Reasonable in light of customary gifts and entertainment;

- ☞ A gift of cash is never appropriate.
- ☞ A gift and entertainment costs should be unmistakably reasonable - not lavish, extravagant, or too frequent.
- ☞ The gift should be given in a manner that avoids any appearance of impropriety.
- ☞ Employees should avoid a pattern of providing nominal gifts to the same person or group, as it may begin to take on the appearance of a bribe.
- ☞ Properly recorded in Emeren Group's books and records.
- ☞ Fully disclosed, as appropriate, to the foreign government;

The gift or meals should never be given without approval from the GM, CFO, and CEO, and the value of the gift or meals should be under the following standard:

- ☞ The value to non-U.S. government officials or SOEs officials is U.S. \$100.
- ☞ The value to government-related officials is U.S. \$50.
- ☞ Especially in China, the value to government-related officials should not exceed RMB 200.

6.2.4.2 Hosting Foreign Official Travel

On occasion, Emeren Group may receive requests to host foreign officials for training, either at Emeren Group facilities, or at training opportunities sponsored by outside vendors such as universities, language study organizations, and others. Similarly, Emeren Group may also be asked to host foreign officials outside of their host country at technical or operational committee meetings, other project meetings, or negotiating sessions. These hostings may be required under contractual commitments, or requested or offered outside of those commitments.

When these hostings occur outside the foreign official's home country, extend over more than 1 day, and involve airfare, hotel, transportation, and meal expenses, these hostings will tend to involve more significant expense amounts. They pose higher FCPA and public relations risks than routine in-country hosting and entertainment of foreign officials. Accordingly, Emeren Group policy is to limit these types of hosting.

Guidelines governing all hosting outside an official's home country are contained in Exhibit B. As noted in Exhibit B, (1) the FCPA Pre-Approval Form; (2) a description of the business meetings, activities,

and entertainments; and (3) a schedule of expenses to be paid or reimbursed must be presented to the Compliance Officer as early as possible for consideration and approval.

In all cases, it is important to ensure that Emeren Group communicates clearly in advance, and in writing to the foreign official, what expenses will and will not be covered by Emeren Group. Failure to do so can increase legal risks as well as the potential for misunderstandings with the foreign official.

6.2.4.3 Facilitating or "Grease" Payments.

Petty corruption remains a significant problem in many countries, and the FCPA grants a narrow exception permitting certain “facilitating payments.” Emeren Group’s policy is to only make these payments when it is lawful to do so only under local law. Emeren Group’s Compliance Officer will determine, with the help of local experts, whether such payments are legal under local laws. No facilitating payments can be made before the Compliance Officer’s determination.

6.2.4.4 Donations to Foreign Charities

Emeren Group believes in contributing to the communities in which it does business and permits reasonable donations to foreign charities and other recipients either ad hoc or under a social investment program.

However, Emeren Group needs to be certain that donations to foreign-based charities and other recipients are not disguised illegal payments to foreign officials in violation of the FCPA. Emeren Group must also confirm that the charity does not act as a conduit to fund illegal activities in violation of U.S. anti-money laundering or other laws. Before donating to a charitable entity, the following guidelines should be followed:

- Request for approval. A written request describing the charity, including the name of the contact persons and attaching any supporting documentation, should be submitted to and kept by the Emeren Compliance Officer. The donation should generate publicity or goodwill for the Group, demonstrate Emeren Group's commitment to the community, whether local, regional, or national, and also be approved under Emeren Group’s other guidelines on charitable giving and social investment.
- Background check on charitable organizations. Before authorizing any payment to a foreign charity, Emeren Group should confirm that the relevant charity is a bona fide organization and not an entity controlled by or for the benefit of a foreign official or a conduit to fund terrorism. The verification of a charity's authenticity may include (a) obtaining from the charity its articles of incorporation, statements from independent accountants, and information reflecting

the charity's purpose and key management personnel; (b) requesting receipts, reports, and other documents that demonstrate how the charity will use the Group's funds; (c) obtaining related information from the local office of the U.S. Embassy; (d) obtaining a written opinion from local counsel; and/or (e) checking that the charity is not suspected of supporting terrorism.

- Approval. Before Emeren Group donates to any foreign charity, the Emeren Group Compliance Officer or Emeren Group's CFO should authorize, in writing, the donation and affirm that it does not violate local laws, rules, or regulations.
- Record Retention. Documentation that substantiates Emeren Group's donation, e.g., receipts, should be retained and recorded properly in Emeren's books and records. Supporting documentation relating to the donation must be forwarded to the Accounting and Corporate Communications Departments so that the payment or expense is accurately described and reflected in Emeren Group's books and records.

6.2.4.5 Foreign Political Contributions

The policy of the Emeren Group is that under no circumstances shall Emeren Group's funds be used to make political donations to political parties or candidates from countries other than the United States and Canada (and then limited to other policies and procedures of the Emeren Group team regarding political donations), even if a country's written law allows such donations.

Emeren Group's policy is not intended to discourage or prohibit national employees of a host country from voluntarily making personal political contributions, participating in the political process on their own time and at their own expense, from expressing their personal views on legislative or political matters or from otherwise personally engaging in political activities in such country. Expatriate employees should, as a rule, refrain from participating in the political process in foreign countries.

6.2.4.6 Emergency Health and Safety Payments

This policy does not affect a situation in which an employee is required to make a payment to avoid a risk to personal health or safety.

Although any such situations should be avoided if possible, neither the FCPA nor Emeren Group policy prohibits forced or extorted payments in such circumstances.

6.3 Third-Party Issues

6.3.1 Responsibility

The FCPA prohibits corrupt payments through intermediaries. Persons and entities covered by the FCPA are liable for indirect payments or promises prohibited by the FCPA if such payments or promises are made through a consultant, agent, sponsor, joint venture partner, or other third party with the knowledge that the ultimate beneficiary is a prohibited recipient. Knowledge includes conscious disregard and deliberate ignorance of facts that indicate a high probability that the relevant payment will occur.

6.3.2 Disclosure of Knowledge and Discontinuance of Payment

If any Company personnel knows or reasonably believes that a payment or promise of payment prohibited by the FCPA has been, is being, or may be made by a joint venture partner, representative, supplier or other third-party intermediary for/on the Company's behalf or for the benefit of the Company, the relevant individual shall immediately advise the Compliance Officer and shall use all reasonable efforts to prevent the payment or payment promise from occurring.

6.3.3 Third-Party Payments

The FCPA prohibits both direct and indirect payments to foreign officials. Thus, a U.S. company can face FCPA liability based on improper payments made by its agents or other business partners, whether or not Emeren Group knew of the payments. Emeren Group's reputation for conducting its business using only legal and ethical means can be undone by a single act by a third party that Emeren Group chose as its partner or representative. Thus, for business and legal reasons, Emeren Group's practice of fairness and professionalism must extend to the activities of Emeren Group's agents, consultants, representatives, and business partners.

The Emeren Group policy is to cooperate directly with foreign governments and officials. Emeren Group typically does not rely on third parties for business development or government relations and therefore does not encourage the use of third parties for these purposes. However, the Emeren Group recognizes that in certain situations, such as participating in blocks, it is conditional on cooperation with local companies, and therefore it is necessary or prudent to establish relationships with third parties. In addition, there are a series of third parties, including service, equipment suppliers, and joint venture partners, with whom we must collaborate to operate our business on a daily basis.

In those circumstances where third-party relationships are appropriate, to protect against the business and legal risks of dealing with third parties who do not share Emeren Group's commitment to fair dealing, Emeren Group must carefully choose its partners and representatives. Therefore, before entering into an agreement with any agent, consultant, joint venture partner, or other representative who will act on behalf of Emeren Group concerning foreign governments on international business development or retention, Emeren Group will perform appropriate FCPA-related due diligence and impose prudent safeguards against improper payments. Contracts with

representatives who will interact with foreign governments on international business development or retention must be approved by the Group CFO.

Once any third-party relationship has been entered into, Emeren Group will be vigilant in monitoring the relationship. Any questions regarding the policy or procedures, or their applicability to proposed third parties, should be directed to the Compliance Officer.

6.4 CONTRACT PROCEDURES

6.4.1 Standard Forms and Provisions

The Emeren Group internal control department maintains standard forms for most types of contracts and transactions. All Company personnel are strongly encouraged to use those forms as at least a beginning point in all applicable transactions. Unless otherwise approved in writing by the Emeren Group Compliance Officer.

All contracts with consultants, agents, sponsors, and other third-party representatives, all joint venture, partnership, shareholder contracts, and all contracts for the acquisition of entities or business assets, to the extent such contracts or agreements pertain to business carried out or to be carried out in whole or in part outside the United States, shall include this Manual, as amended, as an Appendix and shall contain provisions substantially similar to those specified in Annex F in respect of the following matters:

- (a) Application of and Compliance with the FCPA
- (b) Restriction on Government and Political Activities
- (c) Accuracy of Documents
- (d) Cooperation with Audit Activities
- (e) Remedies for Default
- (f) Payment Mechanisms

In addition, all contracts which provide for the disbursement of funds by the Company to another contracting party for services related to business transactions outside the United States shall be in writing and shall require the other party to submit a written invoice and to certify that during the period covered by the invoice the other party has complied with all of its obligations under the relevant contract and is in compliance with the terms of its contract with the Company on the date of such certification. Contracts requiring the disbursement of funds by the Company for such services shall also require that funds shall be transferred only to a bank account owned by the designated recipient and that such account shall be located in the jurisdiction where the relevant business services are to be

performed occurs unless the Emeren Group Compliance Officer determines that payment in another jurisdiction does not violate local law and that a valid business reason for payment in another jurisdiction exists.

6.4.2 Approval Requirements

In addition to any other approvals required by other Company policies, any contract to which Paragraph 6.1 above applies shall require the specific approval of the Emeren Group Compliance Officer and the Emeren Group Chief Financial Officer. No payment may be disbursed by the Company under any such contract unless an original written copy of the contract is in the files maintained by the Emeren Group Compliance Officer and such copy reflects the approvals required above.

6.5 Permitted Actions

6.5.1 Local Written Law Affirmative Defense

A payment that is lawful under the written laws and regulations of the country where it is made is not prohibited by the FCPA. However, bribery of a government official is illegal in every country in the world so the assertion of this defense will rarely if ever apply. Only the Emeren Group Compliance Officer may authorize a payment if the legitimacy of such payment is based on a local law defense.

6.5.2 Reasonable and Bona Fide Expenditures

The FCPA also does not prohibit the payment of reasonable and bona fide expenditures, such as travel and lodging expenses, incurred by a foreign official and directly related to:

- (a) The promotion, demonstration, or explanation of products or services;
- (b) The execution or performance of a contract with a foreign government.

Payment of government official expenses of the type described must be expressly approved by the Emeren Group Compliance Officer or General Manager in the country where the relevant payment will be made or where the relevant official resides.

7. AUDITING

7.1 Regular Auditing

Testing and analysis of Company transactions for possible violation of the FCPA, the Policy, or the Compliance Procedure shall be a regular part of

the Company's routine audit process and all Company personnel shall cooperate fully with the Company's audit staff in that regard.

7.2 FCPA Spot Auditing

The Emeren Group Compliance Officer, in consultation with the Emeren Group Internal Audit staff, shall select at least two Company operating locations outside the United States each year for a special audit of its FCPA compliance practices.

7.3 FCPA Audit Reporting to Audit Committee

The results of all FCPA auditing activities shall be communicated to the Audit Committee promptly after completion of the relevant audit.

8. ACCOUNTING ISSUES

8.1 Materiality Standard

The FCPA requires "reasonable assurances" and "reasonable detail", which means the level of detail and degree of assurance as would satisfy prudent officials in the conduct of their affairs. That standard has been interpreted to mean that the records and control requirements do not connote an unrealistic degree of exactitude or precision. Such a standard is generally thought to be higher than the materiality standard which typically applies in accounting. Accordingly, even relatively small payments or gifts may have to be accurately recorded to satisfy the FCPA's requirements.

8.2 Reporting

Any perceived failure of the Company's books and records to meet the FCPA's requirements shall be reported to the Emeren Group Compliance Officer, who shall consult with the Emeren Group Chief Financial Officer, the Company's internal and external auditors, and the Audit Committee to determine whether a possible violation exists and, if so, the appropriate actions required.

9. PENALTIES AND SANCTIONS

9.1 Bribery

The following penalties apply to a violation of the FCPA's bribery prohibitions:

- (a) Criminal penalties of not more than \$2,000,000 for corporations and not more than \$100,000 for individuals and/or imprisonment for not more than five years;

(b) Fines of up to \$100,000 and or imprisonment for up to five years for any employee, officer, director, stockholder, or agent who willfully violates the FCPA; and Civil penalties of not more than \$100,000.

9.2 Accounting

The following penalties apply to willful violation of the FCPA's accounting provisions:

(a) Fines of up to \$1,000,000 and/or imprisonment for up to ten years for individuals; and

(b) Fines of up to \$2,000,000 for corporations.

ANNEX A

FCPA POLICY STATEMENT

EMEREN GROUP LTD

FOREIGN CORRUPT PRACTICES ACT COMPLIANCE POLICY

Statement of Policy. It is the policy of Emeren Group Ltd. ("Emeren Group"), that Emeren Group, all of its affiliates, all employees, officers, directors of Emeren Group or any of its affiliates, and all persons or entities that act as a representative or advisor to Emeren Group or any its affiliates shall comply fully with all applicable provisions of the U.S. Foreign Corrupt Practices Act (the "FCPA"). In this Policy, Emeren Group and its affiliates are referred to collectively as the "Emeren Group LTD". This Policy supplements the Emeren Group Code of Business Conduct and Ethics.

Policy Manual. Emeren Group management will prepare and maintain a *Foreign Corrupt Practices Act Policy Manual* (the "Manual") to provide specific guidance on the implementation and enforcement of this Policy. The Manual will be distributed to all employees and representatives who have control over any Emeren Group funds or who have responsibility for recording transactions that impact Emeren Group books and records.

Administration of the Policy. The Policy will be administered by the Audit Committee of the Emeren Group Board of Directors and the Emeren Group Compliance Officer.

Requirements of the FCPA. The FCPA has two basic requirements which could be summarized as follows:

- (a) Persons and entities covered by the FCPA may not corruptly pay, offer to pay, or give anything of value to any foreign official, foreign political party or party official, or any candidate for foreign political office. A payment or offer is corrupt if it is made intentionally and voluntarily to cause conduct that is prohibited by the FCPA. A foreign official means any officer or employee of a foreign government, a public international organization or any department or agency thereof, or any person acting in an official capacity for such government or organization. The FCPA prohibits the offer or promise of or payment of anything of value to any of the foregoing (the "Prohibited Recipients") to influence an official act or decision that will assist the covered person or entity in securing an improper advantage, in obtaining or retaining business or in directing business to any other person or entity.
- (b) Entities whose securities are publicly traded in the U.S. are required to make and keep accurate books and records in reasonable detail and to devise and maintain a reasonable system of internal controls.

Applicability of the FCPA and other Laws. Securities of Emeren Group are registered on the New York Stock Exchange in the United States and, accordingly, Emeren Group is an "issuer" under the terms of the FCPA. As an "issuer", Emeren Group is subject to all requirements of the FCPA, not only in respect of its activities but also those of the U.S. and non-U.S. entities which it controls, those of its own officers, directors, and employees, those of the officers, directors, and employees of entities which it controls and those undertaken with Emeren Group's knowledge by other persons or entities that act on behalf of Emeren Group or entities which it controls the U.S. entities and persons who are not "issuers" are directly subject to the FCPA as are their officers, directors, and employees regardless of nationality. Non-U.S. persons or entities not otherwise subject to the FCPA are subject to the FCPA to the extent they carry out any part of any prohibited activity in the U.S. Given Emeren Group's status as a public company and the ownership structure, operational breadth, and management philosophy of the Emeren Group members, it should be assumed that the FCPA applies to all Emeren Group operations.

Officials. The FCPA applies to payments to any foreign government official, regardless of rank or position. For purposes of the FCPA, foreign government officials include all levels of federal, state, provincial, county, municipal, and similar officials of any government outside the United States and also include all levels of officials of any commercial enterprise owned by a government other than the United States. Public international organizations include organizations such as the International Monetary Fund, the European Union, the World Bank, and other similar organizations.

Third-Parties and Knowledge. The FCPA prohibits corrupt offers, promises, and payments through intermediaries. Thus, persons and entities covered by the FCPA are liable for indirect offers, promises, or payments to Prohibited Recipients if such offers, promises, or payments are made through an agent, joint venture partner, or other third-party intermediary with the knowledge that a Prohibited Recipient will be the ultimate recipient. Knowledge includes conscious disregard and deliberate ignorance of facts that indicate a high probability that the relevant payment will occur. Payments include transfers of anything of value.

Permitted Payments. The FCPA describes three narrow categories of payments to or for the benefit of Prohibited Recipients that are permissible. Payments that are lawful under the written laws and regulations of the relevant country and payments that constitute a reasonable and bona fide expense incurred by or on behalf of a Prohibited Recipient are not prohibited by the FCPA. In addition, small payments made to low-level government officials to secure routine governmental action are not covered by the FCPA. Routine governmental action does not include any decision by a foreign official to award new business or to continue business with a particular person or entity.

No payment or promise of payment to any Prohibited Recipient may be made by or on behalf of any member of the Emeren Group on the basis that it is permitted as provided above unless such payment or promise has been approved by the procedures specified in the Manual.

Penalties. Individuals who violate the FCPA bribery provisions may be imprisoned for up to five years and are subject to a fine of up to \$100,000. An employer is not permitted to reimburse fines for FCPA violations. In addition, employees of the Emeren Group who violate the FCPA should expect to have their employment terminated for cause. Persons

or entities who provide services to the Emeren Group as independent contractors should similarly expect to have their contracts terminated for cause if they violate the FCPA. Emeren Group or the relevant member of the Emeren Group will actively seek to recoup any losses which it suffers as a result of a violation of the FCPA from the individual or entity who carried out the prohibited activity.

Education and Monitoring. Emeren Group management will implement and maintain a program to provide continuous FCPA education and training to Emeren Group employees, officers, directors, and representatives and a program to actively monitor compliance with this Policy and the FCPA by all Emeren Group Ltd entities, employees, officers, directors, and representatives. The details of those programs are specified in the Manual.

Further Information. Any questions about the Policy or the Manual should be directed to the compliance officials identified from time to time in the Manual.

ANNEX B

[As of July 22, 2004]

**ANTI-BRIBERY AND BOOKS & RECORDS PROVISIONS OF
THE FOREIGN CORRUPT PRACTICES ACT
*Current through Pub. L. 105-366 (November 10, 1998)***

**UNITED STATES CODE
TITLE 15. COMMERCE AND TRADE
CHAPTER 2B--SECURITIES EXCHANGES**

§ 78m. Periodical and other reports

(a) Reports by the issuer of security; contents

Every issuer of a security registered according to section 781 of this title shall file with the Commission, under such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security:

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed according to section 781 of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

(b) Form of report; books, records, and internal accounting; directives

(2) Every issuer which has a class of securities registered under section 781 of this title and every issuer which is required to file reports according to section 781(d) of this title shall:

(A) Make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and

(B) Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that

(i) Transactions are executed in accordance with management's general or specific authorization;

(ii) Transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) Access to assets is permitted in accordance with management's general or specific authorization only; and

(iv) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(3) (A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters. If such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues such a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer that has a class of securities registered pursuant to section 781 of this title or an issuer which is required to file reports pursuant to section 78o(d) of this title holds 50 per cent-um or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceeds in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer that demonstrates good faith efforts to use such influence shall be conclusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph(2)of this subsection, the terms "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.

* * *

§ 78dd-1 [Section 30A of the Securities & Exchange Act of 1934].

Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer that has a class of securities registered pursuant to section 781 of this title or which is required to file reports under section 78o(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer a gift, promise or authorization of the giving of anything of value to:

(1) any foreign official for purposes of

(A) (i) Influencing any act or decision of such foreign official in his official capacity, (ii) Inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) Inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) Any foreign political party or official thereof or any candidate for foreign political office for purposes of :

(A) (i) Influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) securing any improper advantage; or

(B) Inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

In order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of :

(A) (i) Influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) Inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

In order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (g) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (g) of this section that :

(1) 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 official's, or candidate's country; or

(2) 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, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to

(A) The promotion, demonstration, or explanation of products or services; or

(B) The execution or performance of a contract with a foreign government or agency thereof.

(d) Guidelines by Attorney General

Not later than one year after August 23, 1988, the Attorney General, after consultation with the Commission, the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue :

(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) general precautionary procedures which issuers may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in accordance with the provisions of Sub chapter II of Chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of Chapter 7 of that title.

(e) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by issuers concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request. The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests.

In any action brought under the applicable provisions of this section, there shall be a rebuttable presumption that conduct, which is specified in a request by an issuer and for which the Attorney General has issued an opinion that conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General.

The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of sub-chapter II of chapter 5 of Title 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the issuer, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer withdraws such request before receiving a response.

(3) Any issuer who has made a request to the Attorney General under paragraph (1) may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4) The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1) concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general explanations of compliance responsibilities and potential liabilities under the preceding provisions of this section.

(f) Definitions

For purposes of this section:

(1) (A) The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" Means:

(i) an organization that is designated by Executive Order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(2) (A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if

(i) Such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) Such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance unless the person actually believes that such circumstance does not exist.

(3) (A) The term “routine governmental action” means only an action that is ordinarily and commonly performed by a foreign official in

(i) Obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) Processing governmental papers, such as visas and work orders;

(iii) Providing police protection, mail pick-up, and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across the country;

(iv) Providing phone service, power, and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or (v) Actions of a similar nature.

(B) The term “routine governmental action” does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(g) Alternative Jurisdiction

(1) It shall also be unlawful for any issuer organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof and which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any United States person that is an officer, director, employee, or agent of such issuer or a stockholder thereof acting on behalf of such issuer, to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer gifts, promise to give, or authorization of the giving of anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of this subsection (a) of this section for the purposes set forth therein, irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, the term “United States person” means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. § 1101)) or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the

United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

§ 78dd-2. Prohibited foreign trade practices by domestic concerns

(a) Prohibition

It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd -1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to :

(1) any foreign official for purposes of

(A) (i) Influencing any act or decision of such foreign official in his official capacity, (ii) Inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) Inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

In order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of

(A) (i) Influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) Inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) Securing any improper advantage; or

(B) Inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

In order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person;

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of :

(A) (i) Influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official,

political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or

(B) Inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

In order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsections (a) and (i) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) or (i) of this section that-

(1) 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 official's, or candidate's country; or

(2) 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, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to :

(A) The promotion, demonstration, or explanation of products or services; or

(B) The execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any domestic concern to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) or (i) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction, or temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his

designee is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

All processes in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Guidelines by Attorney General

Not later than six months after August 23, 1988, the Attorney General, after consultation with the Securities and Exchange Commission (SEC), the Secretary of Commerce, the United States Trade Representative, the Secretary of State, and the Secretary of the Treasury, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of the preceding provisions of this section and may, based on such determination and to the extent necessary and appropriate, issue -

(1) Guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice's present enforcement policy, the Attorney General determines would be in conformance with the preceding provisions of this section; and

(2) General precautionary procedures that domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice's present enforcement policy regarding the preceding provisions of this section.

The Attorney General shall issue the guidelines and procedures referred to in the preceding sentence in accordance with the provisions of sub chapter II of Chapter 5 of Title 5 and those guidelines and procedures shall be subject to the provisions of Chapter 7 of that title.

(f) Opinions of Attorney General

(1) The Attorney General, after consultation with appropriate departments and agencies of the United States and after obtaining the views of all interested persons through public notice and comment procedures, shall establish a procedure to provide responses to specific inquiries by domestic concerns concerning conformance of their conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section. The Attorney General shall, within 30 days after receiving such a request, issue an opinion in response to that request.

The opinion shall state whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the preceding provisions of this section. Additional requests for opinions may be filed with the Attorney General regarding other specified prospective conduct that is beyond the scope of conduct specified in previous requests. In any action brought under the applicable provisions of this section, there shall be a rebut-table presumption that conduct, which is specified in a request by a domestic concern and for which the Attorney General has issued an opinion that conduct is in conformity with the Department of Justice's present enforcement policy, is in compliance with the preceding provisions of this section.

Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption for purposes of this paragraph, a court shall weigh all relevant factors, including but not limited to whether the information submitted to the Attorney General was accurate and complete and whether it was within the scope of the conduct specified in any request received by the Attorney General. The Attorney General shall establish the procedure required by this paragraph in accordance with the provisions of sub chapter II of chapter 5 and that procedure shall be subject to the provisions of chapter 7 of that title.

(2) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by a domestic concern under the procedure established under paragraph (1), shall be exempt from disclosure under section 552 of Title 5 and shall not, except with the consent of the domestic concern, be made publicly available, regardless of whether the Attorney General response to such a request or the domestic concern withdraws such request before receiving a response.

(3) Any domestic concern who has made a request to the Attorney General under paragraph 1 may withdraw such request prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect.

(4)The Attorney General shall, to the maximum extent practicable, provide timely guidance concerning the Department of Justice's present enforcement policy with respect to the preceding provisions of this section to potential exporters and small businesses that are unable to obtain specialized counsel on issues pertaining to such provisions. Such guidance shall be limited to responses to requests under paragraph (1)concerning conformity of specified prospective conduct with the Department of Justice's present enforcement policy regarding the preceding provisions of this section and general Explanations of compliance responsibilities and potential liabilities under the preceding provisions of this section.

(g) Penalties

(1) (A) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be fined not more than \$2,000,000.

(B) Any domestic concern that is not a natural person and that violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2) (A) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (i) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person that is an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsection (a) or (i) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a domestic concern, such fine may not be paid, directly or indirectly, by such domestic concern.

(h) Definitions

For purposes of this section:

(1) The term "domestic concern" means

(A) Any individual who is a citizen, national, or resident of the United States; and

(B) Any corporation, partnership, association, joint-stock, business trust, unincorporated organization, or sole proprietorship which has a principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States.

(2) (A) The term "foreign official" means any officer/ employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, instrumentality, or public international organization.

(B) For purposes of subparagraph (A), the term "public international organization" means

(i) an organization that has been designated by Executive order pursuant to Section 1 of the International Organizations Immunities Act (22U.S.C. § 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.

(3) (A) A person's state of mind is "knowing" with respect to conduct, a circumstance, or a result if

(i) Such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

(ii) Such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.

(B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance unless the person actually believes that such circumstance does not exist.

(4) (A) The term "routine governmental action" means only an action that is ordinarily and commonly performed by a foreign official in

(i) Obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

(ii) Processing governmental papers, such as visas and work orders;

(iii) Providing police protection, mail pick-up, and delivery, or scheduling inspections associated with contract performance or inspections related to the transit of goods across the country;

(iv) Providing phone service, power, and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) Actions of a similar nature.

(B) The term "routine governmental action" does not include any decision by a foreign official whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) The term "interstate commerce" here means trade, commerce, transportation, or communication among several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of

(A) A telephone or other interstate means of communication, or

(B) Any other interstate instrumentality.

(i) Alternative Jurisdiction

(1) It shall also be unlawful for any United States person to corruptly do any act outside the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, offer gifts, promise to give, or authorization of the giving of

anything of value to any of the persons or entities set forth in paragraphs (1), (2), and (3) of subsection (a) for the purposes set forth therein, irrespective of whether such United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization.

(2) As used in this subsection, a "United States person" means a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8U.S.C. § 1101) or any corporation, partnership, association, joint-stock, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

It shall be unlawful for any person other than an issuer that is subject to section 30A of the Securities Exchange Act of 1934 or domestic concern, as defined in section 104 of this Act), or for any officer, director, employee, or agent of such person or any stockholder thereof acting on behalf of such person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer gifts, promise to give, or authorization of the giving of anything of value to :

(1) Any foreign official for purposes of

(A) (i) Influencing any act or decision of such foreign official in his official capacity, (ii) Inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) Securing any improper advantage; or

(B) Inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such foreign government or instrumentality.

In order to assist such person in obtaining or retaining business for or with, or directing business to, any person;

(2) Any foreign political party or official thereof or any candidate for foreign political office for purposes of

(A) (i) Influencing any act or decision of such party, official, or candidate in its or his official capacity, (ii) Inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or (iii) Securing any improper advantage; or

(B) Inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such foreign government or instrumentality.

In order to assist such person in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any

foreign political party or official thereof, or to any candidate for foreign political office, for purposes of

(A) (i) Influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) Inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) Securing any improper advantage; or

(B) Inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

In order to assist such person in obtaining or retaining business for or with, or directing business to, any person.

(b) Exception for routine governmental action

Subsection (a) of this section shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

(c) Affirmative defenses

It shall be an affirmative defense to actions under subsection (a) of this section that

(1) 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 official's, or candidate's country; or

(2) 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, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to

(A) The promotion, demonstration, or explanation of products or services; or

(B) The execution or performance of a contract with a foreign government or agency thereof.

(d) Injunctive relief

(1) When it appears to the Attorney General that any person to which this section applies, or officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or temporary restraining order shall be granted without bond.

(2) For the purpose of any civil investigation which, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General or his designee is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to such investigation.

The attendance of witnesses and the production of documentary evidence may be required from any place, territory, possession, or commonwealth of the United States, at any designated place of hearing.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or his designee, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) All processes in any such case may be served in the judicial district in which such person resides or may be found. The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

(e) Penalties

(1) (A) Any juridical person that violates subsection (a) of this section shall be fined not more than \$2,000,000.

(B) Any juridical person that violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(2) (A) Any natural person who willfully violates subsection (a) of this section shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both.

(B) Any natural person who violates subsection (a) of this section shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Attorney General.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a person, such fine may not be paid, directly or indirectly, by such person.

(f) Definitions

For purposes of this section:

- (1) The term “person” when referring to an offender, means any natural person other than a national of the United States or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the law of a foreign nation or a political subdivision thereof -
- (2) The term “foreign official” means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

The term "public international organization" means:

- (i) an organization that has been designated by Executive Order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or
 - (ii) any other international organization that is designated by the President by Executive order for the purposes of this section, effective as of the date of publication of such order in the Federal Register.
- (3) (A) A person’s state of mind is "knowing” with respect to conduct, a circumstance, or a result if
- (i) Such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or
 - (ii) Such person has a firm belief that such circumstance exists or that such result is substantially certain to occur.
- (B) When knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance unless the person actually believes that such circumstance does not exist.
- (4) (A) The term "routine governmental action” means only an action that is ordinarily and commonly performed by a foreign official in :
- (i) Obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;
 - (ii) Processing governmental papers, such as visas and work orders;
 - (iii) Providing police protection, mail pick-up, and delivery, or scheduling inspections associated with contract performance or inspections related to the transit of goods across the country;

(iv) Providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

(v) Actions of a similar nature.

(B) The term “routine governmental action” does not include any decision by a foreign official whether, or on what terms, to award new business or to continue business with a particular party, or any action taken by a foreign official involved in the decision-making process to encourage a decision to award new business to or continue business with a particular party.

(5) “Interstate commerce” means trade, commerce, transportation, or communication among several States, or between any foreign country and any State or between any State and any place or ship outside thereof, and such term includes the intrastate use of —

(A) A telephone or other interstate means of communication, or

(B) Any other interstate instrumentality.

§ 78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in sub section (d) of section 78, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than \$5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding \$25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Failure to file information, documents, or reports

Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78o of this title or any rule or regulation thereunder shall forfeit to the United States the sum of \$100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(c) Violations by issuers, officers, directors, stockholders, employees, or agents of issuers

(1) (A) Any issuer that violates subsection (a) or (g) of section 30A of this title [15 U.S.C. §78dd-1] shall be fined not more than \$2,000,000.

(B) Any issuer that violates subsection (a) or (g) of section 30A of this title [15 U.S.C. §78dd-1] shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(2) (A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates subsection (a) or (g) of section 30A of this title [15U.S.C.§78dd-1] shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both.

(B) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who violates subsection (a) or (g) of section 30A of this title [15U.S.C. §78dd-1] shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.

(3) Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of an issuer, such fine may not be paid, directly or indirectly, by such issuer.

FOREIGN CORRUPT PRACTICES ACT

ANTIBRIBERY PROVISIONS

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United States Department of
Commerce
Office of the Chief Counsel for
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14th Street and Constitution Avenue,
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INTRODUCTION

The 1988 Trade Act directed the Attorney General to provide guidance concerning the Department of Justice's enforcement policy with respect to the Foreign Corrupt Practices Act of 1977 ("FCPA"), 15 U.S.C. §§ 78dd-1, et seq., to potential exporters and small businesses that are unable to obtain specialized counsel on issues related to the FCPA. The guidance is limited to responses to requests under the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure (described on p10) and to general explanations of compliance responsibilities and potential liabilities under the FCPA. This brochure constitutes the Department of Justice's general explanation of the FCPA.

U.S. firms seeking to do business in foreign markets must be familiar with the FCPA. In general, the FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business. In addition, other statutes such as mail and wire fraud statutes, 18 U.S.C. § 1341, 1343, and the Travel Act, 18 U.S.C. § 1952, which provides for federal prosecution of violations of state commercial bribery statutes, may also apply to such conduct.

The Department of Justice is the chief enforcement agency, with a coordinated role played by the Securities and Exchange Commission (SEC). The Office of General Counsel of the Commerce Department also answers general questions from U.S. exporters concerning the FCPA's basic requirements and constraints.

This brochure is intended to provide a general description of the FCPA and is not intended to substitute for the advice of private counsel on specific issues related to the FCPA. Moreover, the material in this brochure is not intended to set forth the present enforcement intentions of the Department of Justice or the SEC with respect to particular fact situations.

BACKGROUND

As a result of SEC investigations in the mid-1970s, over 400 U.S. companies admitted making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties. The abuses ran the gamut from bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharged certain ministerial or clerical duties. Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system.

The FCPA was intended to have and has had an enormous impact on the way American firms do business. Several firms that paid bribes to foreign officials have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracting, and their employees and officers have gone to jail. To avoid such consequences, many companies have implemented detailed FCPA compliance programs intended to prevent and detect any improper payments by employees and agents.

Following the passage of the FCPA, Congress became concerned that American companies were operating at a disadvantage compared to the foreign companies which

routinely paid bribes and, in some countries, were permitted to deduct the cost of such bribes as business expenses on their taxes. Accordingly, in 1988, Congress directed the Executive Branch to commence negotiations with the Organization of Economic Cooperation and Development (OECD) to obtain the agreement of the United States' major trading partners to enact legislation similar to the FCPA. In 1997, almost ten years later, the United States and thirty-three other countries signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United States ratified this Convention and enacted implementing legislation in 1998. See Convention and Commentaries on the DOJ website.

The anti-bribery provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. Since 1998, they also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

The FCPA also requires companies whose securities are listed in the United States to meet its accounting provisions. See 15 U.S.C. § 78m. These accounting provisions, which were designed to operate in tandem with the anti-bribery provisions of the FCPA, require corporations covered by the provisions to make and keep books and records that accurately and fairly reflect the transactions of the corporation and to devise and maintain an adequate system of internal accounting controls. This brochure discusses only the anti-bribery provisions.

ENFORCEMENT

The Department of Justice is responsible for all criminal enforcement and for civil enforcement of the anti-bribery provisions with respect to domestic concerns and foreign companies and nationals. The SEC is responsible for civil enforcement of the anti-bribery provisions with respect to issuers.

ANTIBRIBERY PROVISIONS

BASIC PROHIBITION

The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. With respect to the basic prohibition, there are five elements that must be met to constitute a violation of the Act:

A. Who - The FCPA potentially applies to *any* individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm. Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate the anti-bribery provisions or if they conspire to violate those provisions.

Under the FCPA, U.S. jurisdiction over corrupt payments to foreign officials depends upon whether the violator is an "issuer," a "domestic concern," or a foreign national or business. An "issuer" is a corporation that has issued

securities that have been registered in the United States or who are required to file periodic reports with the SEC. A "domestic concern" is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States, or a territory, possession, or commonwealth of the United States.

Issuers and domestic concerns may be held liable under the FCPA under *either* territorial or nationality jurisdiction principles. For acts taken within the territory of the United States, issuers and domestic concerns are liable if they take an act in furtherance of a corrupt payment to a foreign official using the U.S. mail or other means or instrumentality of interstate commerce. Such means or instrumentality include telephone calls, facsimile transmissions, wire transfers, and interstate or international travel. In addition, issuers and domestic concerns may be held liable for any act in furtherance of a corrupt payment taken *outside* the United States. Thus, a U.S. company or national may be held liable for a corrupt payment authorized by employees or agents operating entirely outside the United States, using money from foreign bank accounts, and without any involvement by personnel located within the United States.

Prior to 1998, foreign companies, with the exception of those who qualified as "issuers," and foreign nationals were not covered by the FCPA. The 1998 amendments expanded the FCPA to assert territorial jurisdiction over foreign companies and nationals. A foreign company or person is now subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States. There is, however, no requirement that such an act make use of the U.S. mail or other means or instrumentality of interstate commerce.

Finally, U.S. parent corporations may be held liable for the acts of foreign subsidiaries where they authorized, directed, or controlled the activity in question, as can U.S. citizens or residents, themselves "domestic concerns," who were employed by or acting on behalf of such foreign-incorporated subsidiaries.

B. Corrupt intent - The person making or authorizing the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his official position to direct business wrongfully to the payer or to any other person. You should note that the FCPA does not require that a corrupt act succeed in its purpose. The offer or promise of a corrupt payment can constitute a violation of the statute. The FCPA prohibits any corrupt payment intended to influence any act or decision of a foreign official in his or her official capacity, to induce the official to do or omit to do any act in violation of his or her lawful duty, to obtain any improper advantage, or to induce a foreign official to use his or her influence improperly to affect or influence any act or decision.

C. Payment - The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money, or anything of value.

D. Recipient - The prohibition extends only to corrupt payments to a foreign *official*, a foreign *political party* or *party official*, or any *candidate* for foreign political office. The "foreign official" means any officer or employee of a foreign government, a public international organization, any department or agency thereof, or any person acting in an official capacity. You should consider utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure for particular questions as to the definition of a "foreign official," such as whether a member of a royal family, a member of a legislative body, or an official of a state-owned business enterprise would be considered a "foreign official."

The FCPA applies to payments to *any* public official, regardless of rank or position. The FCPA focuses on the *purpose* of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment, and there are exceptions to the anti-bribery provision for "facilitating payments for routine governmental action" (see below).

E. Business Purpose Test - The FCPA prohibits payments made in order to assist the firm in *obtaining* or *retaining business* for or with, or *directing business* to, any person. The Department of Justice interprets "obtaining or retaining business" broadly, such that the term encompasses more than the mere award or renewal of a contract. It should be noted that the business to be obtained or retained does *not* need to be with a foreign government or foreign government instrumentality.

THIRD-PARTY PAYMENTS

The FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. The term "knowing" includes conscious disregard and deliberate ignorance. The elements of an offense are essentially the same as described above, except that in this case the "recipient" is the intermediary who is making the payment to the requisite "foreign official."

Intermediaries may include joint venture partners or agents. To avoid being held liable for corrupt third-party payments, U.S. companies are encouraged to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives. Such due diligence may include investigating potential foreign representatives and joint venture partners to determine if they are in fact qualified for the position, whether they have personal or professional ties to the government, the number and reputation of their clientele, and their reputation with the U.S. Embassy or Consulate and with local bankers, clients, and other business associates.

In addition, in negotiating a business relationship, the U.S. firm should be aware of so-called "red flags," i.e. unusual payment patterns or financial arrangements, a history of corruption in the country, a refusal by the foreign joint venture partner or representative to provide a certification that it will not take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official and not take any act that would cause the U.S. firm to be in violation of the FCPA, unusually high commissions, lack of

transparency in expenses and accounting records, apparent lack of qualifications or resources on the part of the joint venture partner or representative to perform the services offered, and whether the joint venture partner or representative has been recommended by an official of the potential governmental customer.

You should seek the advice of counsel and consider utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure for particular questions relating to third-party payments.

PERMISSIBLE PAYMENTS AND AFFIRMATIVE DEFENSES

The FCPA contains an explicit exception to the bribery prohibition for "facilitating payments" for "routine governmental action" and provides affirmative defenses which can be used to defend against alleged violations of the FCPA.

FACILITATING PAYMENTS FOR ROUTINE GOVERNMENTAL ACTIONS

There is an exception to the anti-bribery prohibition for payments to facilitate or expedite the performance of a "routine governmental action." The statute lists the following examples: obtaining permits, licenses or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone service, power, and water supply, loading or unloading cargo, protecting perishable products or scheduling inspections associated with contract performance or transit of goods across the country.

Actions "similar" to these are also covered by this exception. If you have a question about whether a payment falls within the exception, you should consult with counsel. You should also consider whether to utilize the Justice Department's Foreign Corrupt Practices Opinion Procedure, described below on p.10.

"Routine governmental action" does not include any decision by a foreign official to award new business or to continue business with a particular party.

AFFIRMATIVE DEFENSES

A person charged with a violation of the FCPA's anti-bribery provisions may assert as a defense that the payment was lawful under the written laws of the foreign country or that the money was spent as part of demonstrating a product or performing a contractual obligation.

Whether payment was lawful under the written laws of the foreign country may be difficult to determine. You should consider seeking the advice of counsel or utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure when faced with an issue of the legality of such payment.

Moreover, because these defenses are "affirmative defenses," the defendant is required to show in the first instance that the payment met these requirements. The prosecution does not bear the burden of demonstrating in the first instance that the payments did not constitute this type of payment.

SANCTIONS AGAINST BRIBERY

CRIMINAL

The following criminal penalties may be imposed for violations of the FCPA's anti-bribery provisions: corporations and other business entities are subject to a fine of up to \$2,000,000; officers, directors, stockholders, employees, and agents are subject to a fine of up to \$100,000 and imprisonment for up to five years. Moreover, under the Alternative Fines Act, these fines may be actually quite higher - the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. You should also be aware that fines imposed on individuals may not be paid by their employer or principal.

CIVIL

The Attorney General or the SEC, as appropriate, may bring a civil action for a fine of up to \$ 10,000 against any firm as well as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm, who violates the anti-bribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or(ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from \$ 5,000 to \$ 100,000 for a natural person and \$ 50,000 to \$ 500,000 for any other person.

The Attorney General or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the anti-bribery provisions.

OTHER GOVERNMENTAL ACTION

Under guidelines issued by the Office of Management and Budget, a person or firm found in violation of the FCPA may be barred from doing business with the Federal government. Indictment alone can lead to suspension of the right to do business with the government.

The President has directed that no executive agency shall allow any party to participate in any procurement or non-procurement activity if any agency has debarred, suspended, or otherwise excluded that party from participation in a procurement or non-procurement activity.

In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses; the SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA; the Commodity Futures Trading Commission and the Overseas Private Investment Corporation both provide for possible suspension or debarment from agency programs for violation of the FCPA; and a payment made to a foreign government official that is unlawful under the FCPA cannot be deducted under the tax laws as a business expense.

PRIVATE CAUSE OF ACTION

Conduct that violates the anti-bribery provisions of the FCPA may also give rise to a private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), or actions under other federal or state laws. For example, an action might be brought under RICO by a competitor who alleges that the bribery caused the defendant to win a foreign contract.

GUIDANCE FROM THE GOVERNMENT

The Department of Justice has established a Foreign Corrupt Practices Act Opinion Procedure by which any U.S. company or national may request a statement of the Justice Department's present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure may be found in 28 CFR Part 80. Under this procedure, the Attorney General will issue an opinion in response to a specific inquiry from a person or firm within thirty days of the request. (The thirty-day period does not run until the Department of Justice has received all the information it requires to issue the opinion.) Conduct for which the Department of Justice has issued an opinion stating that the conduct conforms with current enforcement policy will be entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA. Copies of releases issued regarding previous opinions are available on the Department of Justice's FCPA website.

For further information from the Department of Justice about the FCPA and the Foreign Corrupt Practices Act Opinion Procedure, contact Mark F. Mendelsohn, Acting Deputy Chief, Fraud Section, at (202) 514-7021.

Although the Department of Commerce has no enforcement role concerning the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and international developments concerning the FCPA. For further information from the Department of Commerce about the FCPA contact Eleanor Roberts Lewis, Chief Counsel for International Commerce, or Arthur Aronoff, Senior Counsel, Office of the Chief Counsel for International Commerce, U.S. Department of Commerce, Room 5882, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 482-0937.

Last Updated: December 2004

USDOJ/criminal/fraud

ANNEX D

RED FLAGS

- 1) The transaction or the contracting party is in a country where there is widespread corruption
- 2) The contracting party has a history of improper payment practices
- 3) The transaction or the contracting party is in a country that has a history of bribes and kickbacks
- 4) The transaction or the contracting party is involved in or with an industry that has a history of FCPA violations
- 5) The contracting party refuses to agree to comply with the FCPA
- 6) The contracting party has a family or business relationship with a government official
- 7) The contracting party has a poor business reputation
- 8) The contracting party insists that its identity remains confidential or refuses to divulge the identity of its owners
- 9) A government customer recommends or insists on the use of a particular intermediary or consultant
- 10) The contracting party does not have offices or a staff
- 11) The contracting party does not have significant experience
- 12) The contracting party insists on unusual or suspicious contracting procedures
- 13) The fee or commission to be paid to the contracting party is unusually high
- 14) The payment mechanism to be utilized is secretive or unusual
- 15) The contracting party submits inflated or inaccurate invoices
- 16) The contracting party requests cash or bearer instrument payments
- 17) The contracting party requests payment in a jurisdiction outside its home country that has no relationship to the transaction or the entities involved in the transaction
- 18) The contracting party asks that a new customer be granted an excessive credit line
- 19) The contracting party requests unusual bonuses or special payments
- 20) The contracting party requests a usual advance payment

ANNEX E

STANDARD CONTRACT PROVISIONS

In this Exhibit E, the words "First Party" mean Emeren Group or the relevant Emeren Group entities, and the words "Second Party" mean the person or entity that is contracting with the First Party.

(a) **Application of and Compliance with the FCPA**

The parties acknowledge that the First Party and all of its employees, officers, directors, and representatives are subject to the United States Foreign Corrupt Practices Act ("FCPA") and that, accordingly, all of the Second Party's activities under or in connection with this Agreement are subject to the requirements of the FCPA. The Second Party warrants that it has read and understands the full text of the *FCPA*, The First Party's *Foreign Corrupt Practices Act Compliance Policy* (the "Policy"), and the First Party's *Foreign Corrupt Practices Act Compliance Program and Manual*. (the "Manual") and the First Party's *Code of Business Conduct and Ethics* (the "Code"). The Second Party further warrants and agrees that it and all who act on its behalf will fully comply with all requirements of the FCPA, the Policy, the Manual, and the Code, as the same may hereafter be amended from time to time, in connection with all of their activities under or in respect of this Agreement.

Specifically, the Second Party warrants and agrees that neither it nor anyone acting on its behalf will pay, offer to pay, or give anything of value to any foreign government official, political party or political candidate, any public international organization official, or any other person with the knowledge that the payment, promise or gift, in whole or in part, will be passed on to any of the foregoing to influence an official act or decision that will assist the First Party or the Second Party in securing an improper advantage or in obtaining or retaining business or in directing business to any other person or entity. Second Party acknowledges that no employee, officer, or other representative of First Party is authorized to waive First Party's compliance with this Section of the Agreement.

(b) **Restrictions on Ownership, Government Service and Political Activities**

The Second Party has disclosed to First Party in writing the names of all persons and entities who have a beneficial ownership interest in the Second Party.

The Second Party shall immediately notify the First Party in writing in the event any change in such beneficial ownership occurs or is expected to occur. First Party shall have the right to immediately terminate this Agreement for cause upon receipt of any such notice if First Party's continuation of its relationship with Second Party under this Agreement following the actual or proposed change of the Second Party's beneficial ownership would constitute a violation of the FCPA, the Policy, the Manual or the Code. The Second Party represents and warrants that neither it nor any person or entity acting on its behalf is or while this Agreement is in force will become, except with the prior written consent and

approval of the First Party, a government entity, a government official, a political party or candidate, a public international organization or a public international organization official.

The First Party shall have the right to immediately terminate this Agreement in the event of any breach of the foregoing representation.

(c) Accuracy of Documents

The Second Party agrees that all invoices, reports, statements, books, and other records that it or any other person or entity acting on its behalf prepares or submits will be true and accurate in all respects, will fully and accurately describe services rendered, and the nature and recipient of expenditures and or payments made and will not fail to reveal any material information which First Party may require to accurately prepare its books and records. The First Party shall be entitled to immediately terminate this Agreement for cause in the event of any breach of the foregoing undertaking.

(d) Cooperation with Audit Activities

The First Party shall maintain accurate, written books and records regarding all activities conducted according to this Agreement. First Party shall have the right to cause an audit of the Second Party's books and records to be conducted by an independent auditor at any time upon reasonable notice. The First Party shall cooperate fully with any such independent audit.

(e) Remedies for Default

In the event, the First Party terminates this Agreement for cause, no further payment of any kind shall be due Second Party. If any such termination occurs as a result of the Second Party's failure to comply with the FCPA, the Policy, the Manual, or the Code, the Second Party shall promptly refund to First Party all amounts previously paid to the Second Party by the First Party according to this Agreement. The Second Party shall indemnify and hold First Party, its affiliated companies, and their respective officers, directors, and employees harmless from any claim, liability, fine, penalty, loss, or damage that arises as a result of the Second Party's failure or alleged failure to comply with its obligations under this Agreement. The remedies set forth herein are not exclusive and First Party shall have the right to pursue any other remedy, right, or recovery which may be available to it under applicable law. For purposes of any action seeking to enforce such indemnity, Second Party agrees to submit to the jurisdiction of the High Court of England in London and that an order of enforcement in respect of any judgment rendered by such Court may be validly entered in any court having jurisdiction over any of the Second Party's assets.

(f) Payment Mechanisms

Payments to be made by the First Party to the Second Party according to this Agreement shall be made by wire transfer to a bank account owned by the Second Party, located in the country where the relevant services are performed and identified in writing in an Appendix to this Agreement.

ANNEX F

Emeren Group's FCPA Due Diligence requirements

- (a) The contract with the Representative should include, among other things, the following provisions:
- The Representative's obligation to strictly comply with the FCPA;
 - The Representative's obligation to maintain separate books and records;
 - Emeren Group's right to audit the Representative's books and records, including documents of the Representative's interaction with non-U.S. government officials on behalf of Emeren Group; and
 - Emeren Group's right to unilaterally terminate the contract in the event of credible evidence of an FCPA violation being discovered.
- (b) All Representatives must be listed in the Legal Due Diligence Database.
- (c) Critical information must be compiled and preserved during the selection process of the Representative. At a minimum, this information should include the:
- Experience and skills of the Representative;
 - Business reputation of the Representative, especially with other U.S. companies; and
 - Representative's and family's relationship to any political parties, candidates, non-U.S. government officials, or entities.
- (d) The employees must be assured that any relationship between the Representative or the Representative's family and a political party or non-U.S. government official is permissible under local law.
- (e) The reason for representing the commission rate (if any) must be documented.
- (f) Include an explanation of the Representative's capabilities, the services that will be provided, and the basis for believing the compensation is reasonable.
- (g) Conduct an interview with the Representative, preferably at the Representative's place of business, and explain Group's expectations and anti-bribery policies. There must never be any body language or implicit understanding to suggest anything less than full compliance with anti-bribery policies and laws.
- (h) Verify the information the Representative provides on background questionnaires and other forms submitted to Emeren Group.

- (i) Require certificates of compliance from the Representative stating an understanding of the applicable anti-bribery laws and compliance with both Group's policies and applicable laws.
- (j) Maintain and update the Representative's due diligence file with new information gained during any review of the relationship.
- (k) Conduct a re-certification process for the Representatives at least every two years.

ANNEX G

Frequently Asked Questions regarding the FCPA

(a) What actions are prohibited under the FCPA?

Under the FCPA, U.S. companies and their employees are prohibited from bribing non-U.S. government officials. The FCPA also prohibits making or authorizing an offer to pay or a promise to pay a non-U.S. government official to induce that official to exercise his or her discretion improperly or illegally to award business or to grant an improper advantage to Emeren Group.

(b) What types of payments are prohibited?

Prohibited transactions include payments or valuable items to a non-U.S. government official for a corrupt purpose to unfairly obtain or retain business or gain an improper advantage. Examples are giving gifts, paying expenses, forgiveness of debt, and personal favors (e.g., the hiring of a relative of a non-U.S. government official.)

(c) Who is a foreign or non-U.S. government official?

The FCPA defines a “non-U.S. Government official” or “foreign official” as any officer, employee, or representative of a non-U.S. government or any department, agency, or instrumentality of the government or a public international organization. The FCPA’s definition of an official also includes employees and officers of government-owned or controlled companies or enterprises, such as a state-owned or transportation company.

(d) Is Emeren Group liable for the acts of its agents or third-party representatives?

Yes, Emeren Group may be liable for bribes made by both its U.S. and non-U.S. Representatives or other parties acting on its behalf if Emeren Group had prior knowledge of or should reasonably have known about the bribes. If the circumstances indicate that Emeren Group ignored conduct that violated the anti-bribery provisions of the FCPA, the Company or its Employees may be deemed to know the unlawful conduct. All Employees have to inquire when circumstances raise warning signs regarding FCPA compliance.

(e) May Emeren Group transact business with non-U.S. government entities?

Yes, the FCPA does not prevent Emeren Group from engaging in legitimate business transactions with non-U.S. government entities, such as contracting for the delivery of various goods and services. The FCPA is focused on corrupt payments to individual non-U.S. government officials that are made to unfairly gain business opportunities or improper advantages.

(f) Is it possible to do business with a non-U.S. government official as an individual or entities that are co-owned by a non-U.S. government official?

Yes, but Emeren Group and Employees must be very vigilant in supervising these relationships and gaining assurances that non-U.S. government officials will comply with the FCPA. In these situations, the COMPLIANCE OFFICER must be contacted before the initiation of any transaction and all pertinent FCPA due diligence requirements must be followed. These situations should be avoided if at all possible.

(g) What happens if an employee violates the FCPA?

If an FCPA violation occurs, Emeren Group and the individual(s) involved in the violation may be found liable for substantial monetary penalties. In addition, an individual Employee who is found to have engaged in illegal activity under the FCPA may also be subject to imprisonment. If an Employee is found guilty of a violation of the FCPA, Emeren Group will not pay (or reimburse) the Employee for the fines or legal fees incurred in defending against the charges. The employee will also be subject to disciplinary action including possible termination.