any provision of this chapter that was added by the Wall Street Transparency and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this chapter, as in effect prior to July 21, 2010.


AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761-774) of title VII of Pub. L. 111-203 effective on the later of 30 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 90 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES TO TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.


AMENDMENTS


EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 30 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 90 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 774 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1136, set out under section 78d of this title.

§78dd-1. Prohibited foreign trade practices by issuers

(a) Prohibition

It shall be unlawful for any issuer which has a class of securities registered pursuant to section 78f 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 orinstrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, 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 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 his 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 his 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;

(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 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) 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, 1968, 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 the preceding sentence in accordance with the provisions of subchapter 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.

(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 instrumentalities 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 instrumentalities, 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 organisation that is designated by Executive order pursuant to section 288 of title 22; 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 which 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 country;
(iv) providing phone service, power and water supply, loading and unloading cargo, or protecting perishable produce 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 decisionmaking process to encourage a decision to award new business to or to continue business with a particular party.

(g) alternative jurisdiction

(1) It shall also be unlawful for any issuer organised 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 with the Securities and Exchange Commission or which is required to file reports under section 780(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, gift, 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) 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 1101 of title 5) or any corporation, partnership, association, joint-stock company, business trust, 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.


AMENDMENTS

1998—Subsec. (a)(1)(A). Pub. L. 105-436, § 2(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or both;"

Subsec. (a)(2)(A). Pub. L. 105-436, § 2(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A)(i) influencing any act or decision of such foreign official, official or candidate in his or his official capacity, or (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;"

Subsec. (b). Pub. L. 105-308, § 2(c)(3), substituted "Subsections (a) and (g)" for "Subsection (a)".

Subsec. (c). Pub. L. 105-308, § 2(c)(3), substituted "subsection (a) or (g)" for "subsection (a)".

Subsec. (d). Pub. L. 105-308, § 2(c)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term foreign official means any officer or employee of any foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality;"

Subsec. (g). Pub. L. 105-308, § 2(c)(3), added subsec. (g), 1998—Pub. L. 105-308 substituted "Prohibited foreign trade" for "Foreign corrupt" in section catchline and amended text generally, revising and restating provisions of subsec. (a) relating to prohibitions, adding subsec. (b), redesignating provisions of subsec. (a) and (b) relating to definitions as subsec. (c) and (d) and amending those provisions generally.

TREATMENT OF INTERNATIONAL ORGANIZATIONS PROVIDING COMMERCIAL COMMUNICATION SERVICES

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"(a) Definition.—For purposes of this section:

(1) International organization providing commercial communications services.—The term 'international organization providing commercial communications services' means:

(A) the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization; and

(B) the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization.

(2) Pro-competitive privatization.—The term 'pro-competitive privatization' means a privatization term that the President determines to be consistent with the policies of obtaining full and open competition to such organizations (or their successors) for commercial market access, in the provision of satellite services.

(b) Treatment as Public International Organizations.—

(1) Treatment.—An international organization providing commercial communications services shall be treated as a public international organization for purposes of section 2 of the Securities Exchange Act of 1934 (15 U.S.C. 78a) and sections 90 and 90A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78j and 78j-1) until such time as the President certifies to the Committees on Commerce [now Committees on Energy and Commerce] of the House of Representatives and the Senate Committee on Banking, Housing, and Urban Affairs and Commerce, Science, and Transportation that such international organization providing commercial communications services has adopted a pro-competitive privatization.

(2) Limitation on effect of treatment.—The requirement for a certification under paragraph (1), and any certificate made under that paragraph, shall not be construed to affect the administration by the Federal Communications Commission of the Communications Act of 1934 (47 U.S.C. 151 et seq.), in authorizing the provision of services to, from, or within the United States over space segment of the international satellite organizations, or the privatized affiliates or successors thereof.

(3) Extension of Legal Process.—

(A) In General.—Except as required by international agreements to which the United States is a party, an international organization providing commercial communications services, its officers and employees, and its records shall not be accorded immunity from suit or legal process for any act or omission taken in connection with such organization's capacity as a provider, directly or indirectly, of commercial telecommunications services to, from, or within the United States.

(B) No Effect on Personal Liability.—Paragraph (1) shall not affect any immunity from personal liability of any individual who is an official or employee of an international organization providing commercial communications services.

(4) Effective Date.—This subsection shall take effect on May 1, 1989.

(5) Elimination or Limitation of Exceptions.—

(1) Action Required.—The President shall, in a manner consistent with requirements in international agreements to which the United States is a party, expeditiously take appropriate actions necessary to eliminate or reduce substantially all privileges and immunities that are accorded to an international organization described in subparagraph (A) or (B) of subsection (a)(1), its officials, its employees, or its records, and that are not eliminated pursuant to subsection (c).

(2) Disobstruction of Agreements.—The President shall designate which exceptions constitute international agreements to which the United States is a party for purposes of this section.

(3) Presentation of Law Enforcement and Intelligence Functions.—Nothing in subsection (c) or (d) of this section shall affect any immunity from suit or legal process of an international organization providing commercial communications services, or the privatized affiliates or successors thereof, for acts or omissions—


(B) under similar State laws providing protection to service providers cooperating with law enforcement agencies pursuant to State electronic surveillance or evidence laws, rules, regulations, or procedures; or

(C) pursuant to a court order.

(6) Rules of Construction.—

(1) Negotiations.—Nothing in this section shall affect the President's existing constitutional authority regarding the time, scope, and objectives of international negotiations.

(2) Privatization.—Nothing in this section shall be construed as legislative authorization for the privatization of INTELSAT or INMARSAT, nor to increase the President's authority with respect to negotiations concerning such privatization.

(3) Ratification.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

(4) Domestic Legislation.—A description of the domestic laws enacted by each party to the Convention that implement commitments under the Convention, and of the compatibility of such laws with the Convention.

(5) Enforcement.—An assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

(A) an assessment of the enforcement of the domestic laws described in paragraph (3); and

(B) an assessment of efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose.

(6) Laws Providing Tax Deduction of Bribery.—An explanation of the domestic laws enacted by each party to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

(7) New Signatories.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

Enforcement and Monitoring

Pub. L. 106-353, §1, Oct. 10, 1999, 112 Stat. 3101, provided that:

"(a) Reports Required.—Not later than July 1 of 1999 and each of the 5 succeeding years, the Secretary of Commerce shall submit to the Chairman of the House Committee on Ways and Means and the Senate Finance Committee a report that contains the following information with respect to implementation of the Convention:

(1) Ratification.—A list of the countries that have ratified the Convention, the dates of ratification by such countries, and the entry into force for each such country.

(2) Domestic Legislation.—A description of the domestic laws enacted by each party to the Convention that implement commitments under the Convention, and of the compatibility of such laws with the Convention.

(3) Enforcement.—An assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention and achieve its object and purpose including—

(A) an assessment of the enforcement of the domestic laws described in paragraph (3); and

(B) an assessment of the efforts by each such party to promote public awareness of such domestic laws and the achievement of such object and purpose.

(4) An assessment of the effectiveness, transparency, and visibility of the monitoring process for the Convention, including its inclusion of input from the private sector and non-governmental organizations.

(5) Laws Providing Tax Deduction of Bribery.—An explanation of the domestic laws enacted by each party to the Convention that would prohibit the deduction of bribes in the computation of domestic taxes.

(6) New Signatories.—A description of efforts to expand international participation in the Convention by adding new signatories to the Convention and by assuring that all countries which are or become members of the Organization for Economic Cooperation and Development are also parties to the Convention.

(7) Subsequent Reports.—An assessment of the status of efforts to strengthen the Convention by extending the prohibitions contained in the Convention to cover bribes to political parties, party officials, and candidates for political office."
"(7) ADVANTAGES.—Advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by the organizations described in section 5(a) [set out as a note above], the reason for such advantages, and an assessment of progress toward fulfilling the purposes described in that section.

"(8) EMBRACE AND TRANSPARENCY.—An assessment of anti-bribery programs and transparency with respect to each of the international organizations covered by this Act [amending section 78dd-2 of this title, amending this section and sections 78dd-2 and 88ff of this title, and enacting provisions set out as notes under this section].

"(9) PRIVATE SECTOR REVIEW.—A description of the steps taken to ensure full involvement of United States private sector participants and representatives of nongovernmental organizations described in paragraph (9), a list of additional means for enhancing the scope of the Convention and otherwise increasing its effectiveness. Such additional means shall include, but not be limited to, improved recordkeeping provisions and the desirability of expanding the applicability of the Convention to additional individuals and organizations and the impact on United States businesses of section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78d-1) and sections 104 and 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2; 78dd-3).

"(10) DEFINITION.—For purposes of this section, the term "Convention" means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on November 21, 1997, and entered into force on December 11, 1999, by the United States and 37 other nations."

INTERNATIONAL AGREEMENTS CONCERNING ACTS PROHIBITED WITH RESPECT TO ISSUERS AND DOMESTIC CONCERNS: REPORT TO CONGRESS

Pub. L. 100-418, title V, §6006(a), Aug. 23, 1988, 102 Stat. 124, provided that:

"(1) NOTIFICATIONS.—It is the sense of the Congress that the President should pursue the negotiation of an international agreement, among the members of the Organization of Economic Cooperation and Development, to govern persons from those countries concerning acts prohibited with respect to issuers and domestic concerns by the amendments made by this section (amending sections 78dd-1, 78dd-2, and 78ff of this title). Such international agreement should include a process by which problems and conflicts associated with such acts could be resolved.

"(2) REPORT TO CONGRESS.—(A) Within 1 year after the date of the enactment of this Act [Aug. 23, 1988], the President shall submit to Congress a report on—

"(i) the progress of the negotiations referred to in paragraph (1); and

"(ii) those steps which the executive branch and the Congress should consider taking in the event that those negotiations do not successfully eliminate any competitive disadvantage of United States businesses that results when persons from other countries commit the acts described in paragraph (1); and

"(III) possible actions that could be taken to promote cooperation by other countries in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

"(B) The President shall include in the report submitted under subparagraph (A)—

"(i) any legislative recommendations necessary to give the President the authority to take appropriate action to carry out clauses (II) and (III) of subparagraph (A); and

"(iii) an analysis of the potential effect on the interests of the United States, including United States national security, when persons from other countries commit the acts described in paragraph (1); and

"(III) an assessment of the current and future role of private initiatives in curbing such acts.

...