

The FCPA

United States Foreign Corrupt Practices Act (FCPA)

What you need to know

The FCPA is a U.S. statute that prohibits U.S. companies and their representatives from giving, paying, promising, offering, or authorizing the payment, directly or indirectly through a third party, of anything of value to any Non-U.S. “foreign official” to persuade that official to help the company obtain or keep business or to secure some other improper advantage.

Accounting and Recordkeeping

The FCPA requires U.S. companies to keep accurate and complete records of the transactions in which they engage. As a publicly-owned company, Comtech’s policy is to maintain strong internal controls and ensure accurate and complete records, consistent with the FCPA standards.

What is Prohibited?

The law prohibits offering, promising, or giving “anything of value” to an official to get or keep business or secure some other improper advantage. The prohibition is not limited to cash payments. Gifts, entertainment, excessive business promotional activities, and covering or reimbursing expenses of officials can violate the law. Any expense in excess of \$100 (U.S.) requires prior approval of the Company.

Penalties and Enforcement

The FCPA is aggressively enforced by the U.S. Department of Justice and the U.S. Securities and Exchange Commission. Companies may be fined millions of dollars for violations of the FCPA. Individuals are subject to fines up to \$100,000 per violation, imprisonment up to five years, or both. Recent cases have routinely resulted in prison sentences for corporate executives. Non-U.S. persons have also been subject to enforcement actions and prison terms. Additionally, a company can suffer devastating consequences even if it is not convicted or the statutory penalties are not brought into play – a mere indictment under the FCPA may trigger sanctions, including loss of export privileges and eligibility for U.S. contract awards.

Who Is a “Foreign Official”?

For purposes of the FCPA, it is legally irrelevant whether a person is considered a government official by the government at issue. The U.S. law definition controls.

“Foreign officials” include without limitation any appointed, elected, honorary or career employee, candidate or official of the government, public international organization, or any political party regardless of rank or position. The “government” includes without limitation any agency, department, embassy, or other governmental entity. It also includes any company or other entity owned or controlled by the government. A person does not cease to be a government official by purporting to act in a private capacity or by the fact that he or she serves without compensation. Any questions about the status of an individual should be brought to the attention of a representative of Comtech.

Local Law

Although these Guidelines focus on compliance with the FCPA, it is necessary to remain equally attentive to compliance with the local laws of each of the countries in which Comtech operates or seeks to operate. The international movement against official corruption has spawned new cooperation mechanisms between U.S. enforcement officials and their Non-U.S. counterparts, which significantly increase the risk of investigation and prosecution.

Questions and Guidance

If a question arises or you need additional information or are unsure of a difficult issue, please immediately consult with Comtech representative or if you desire, the Corporate Compliance Officer or Comtech OpenLine at (866) 512-7175 or visit our website at www.openboard.info/cmtl.

Export Terms

What is an Export?

- Sending or taking a controlled article out of the U.S. or its possessions;
- Transferring a controlled article to an embassy, agency or subdivision of a non-U.S. government;
- Disclosing, including by oral and visual means, or transferring, in any manner, controlled technical data to a non-U.S. person regardless of where that non-U.S. person is located;
- Performing a controlled service on behalf of, or for the benefit of, a non-U.S. person whether in the U.S. or abroad;
- Transferring registration, ownership or control to a non-U.S. person of any controlled article covered by the International Traffic in Arms Regulations or Export Administration Regulations.

What is a Re-Export / Re-Transfer?

The transfer of controlled articles, services or technical data to an end use, end user or destination not previously authorized by the USG, including third party or dual nationals.

Who is a Non-U.S. Person?

Anyone not a lawful permanent U.S. resident, including any: business association, foreign corporation, partnership, society, trust or other entity or group that is not incorporated or organized to do business in the U.S.

What is Technical (Tech) Data ?

Information (including software) required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of controlled articles or related services.

What Requires Export of Re-Export / Re-Transfer Approval?



- Transmitting by any means (including FAX or email) or discussing controlled tech data with a non-U.S. person.



- Shipping controlled hardware, tech data or software to any country (including Canada and Mexico).



- Hiring a non-U.S. person as a supplier, consultant or to work in a facility where they have access to controlled tech data.



- Providing controlled drawings or related tech data to a non-U.S. person, vendor or facility.

Are Approvals Required for Brokering Activities?

- Sales representatives and other agents who act as Brokers on behalf of Comtech Telecommunications Corp. to facilitate to the manufacture, export, import or transfer of controlled defense articles or services, are required to register with the Department of State and obtain specific approval before engaging in brokering activities.
- A Broker is any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or services for a fee or commission.
- Brokering activities means acting as a Broker and includes taking any action that facilitates the manufacture, export or import of a defense article or service.

Are There Additional Export Obligations Imposed on Me as a Foreign Partner, Sub-Contractor or Agent Beyond Those Already Discussed?

If you have been given access to export controlled materials pursuant to a U.S. government export license or other authorization, you are subject to the terms and conditions (often called provisos) of that license or authorization. For example, if a license requires that you conduct an annual audit of export controlled materials provided to you by Comtech, you must conduct those audits. Failure to comply with the terms and conditions of a license is a violation of U.S. export regulations and subjects the offender(s) to the same penalties as a violation of the regulations themselves.

Penalties

Comtech and its non-U.S. agents/ subcontractors and partners both in the U.S. and abroad may be subject to:

- *Fines up to \$1 million per violation*
- *Imprisonment up to 10 years per violation*
- *Denial of export privileges*

As an individual, you may also face substantial fines and imprisonment.