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Compliance with the Foreign Corrupt Practices Act

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Foreign Corrupt Practices Act

- **U.S. statute enacted in 1977 after foreign bribery scandals involving U.S. companies and substantially amended in 1988 and 1998 (to bring FCPA into conformity with OECD Convention)**
- **The FCPA makes it illegal for a U.S. person (or non - U.S. person while in the U.S.) to corruptly offer or give money or anything of value, directly or indirectly through agents or intermediaries, to foreign officials or political parties or candidates to obtain or retain business**
- **The FCPA also requires U.S. companies to establish accounting and recordkeeping controls that will prevent the use of “slush funds” and “off-the-books” accounts -- used by some companies in the past to facilitate and conceal questionable payments**
- **Penalties include fines up to \$2,000,000 per violation for companies and \$100,000 and/or up to 5 years imprisonment for individuals. The FCPA prohibits a company from reimbursing an employee for the fine**
- **Individuals are subject to criminal liability under the FCPA, regardless of whether the company is found guilty or even prosecuted**

APPLICATION

- **Our policy applies directly to Lockheed Martin Corporation, its wholly-owned subsidiaries, officers and employees**
- **Our policy applies by contractual requirements to distributors, agents, brokers, consultants, representatives, etc., who may have contact with a foreign customer, and who are hired or retained to provide services directly related to obtaining, retaining, or facilitating business opportunities (including offsets)**
- **Affiliated (controlled but not wholly-owned) entities must adopt policies and procedures substantially similar to CPS-730 to assure compliance**
- **Affiliated (not controlled, i.e., 20-50% owned) entities must adopt appropriate controls and take necessary steps to effect FCPA compliance**

IMPLEMENTATION

Policy is implemented by five Exhibits:

- Exhibit A - Description of the FCPA**
- Exhibit B - Operational Directions**
- Exhibit C - Financial and Accounting Directions**
- Exhibit D - Internal Certification to the Vice President and Controller**
- Exhibit E - Hospitality Guidelines**

Exhibit A - DESCRIPTION OF THE FCPA

- **Accounting and Recordkeeping Controls**
- **Anti-bribery Provisions**
- **Limited Exception and Affirmative Defenses**
 - **Facilitating (“grease”) payments**
 - **Defense for reasonable and bona fide expenditures to promote, demonstrate or explain your product to foreign official (plant visits)**
 - **Defense for payments to foreign officials that are lawful under the written laws of a foreign country**

Exhibit A - DESCRIPTION OF THE FCPA

- **Penalties**

- **Key Terms**

- **Foreign Official**
- **Anything of Value**
- **Knowing**

**(Actual knowledge not required for FCPA violation.
Awareness of a high probability
of a corrupt payment is enough)**

- **Government Instrumentality**
**(Company wholly or partially owned by a foreign
government)**

Exhibit B - OPERATIONAL DIRECTIONS

■ Commitment to Compliance

- “[S]trict compliance with the directions and their underlying policies and goals is of greater value to the Corporation than any business which may be lost.”

■ Prohibitions

- No payments may be made to foreign officials, party officials or candidates except as authorized under CPS-730
- No facilitating payments unless authorized under CPS-730
- No hospitality for foreign officials except as authorized by Hospitality Guidelines and Matrix
- No use of corporate aircraft without written approval by General Counsel, AGC - International, or AGC - Litigation and Compliance

Exhibit C - FINANCIAL AND ACCOUNTING DIRECTIONS

- **Ensuring compliance with these directions is the responsibility of the Vice President and Controller.**
- **Directions contain a number of specific prohibitions:**
 - **No numbered bank accounts**
 - **No payments to anonymous or third party bank accounts or by cash or “bearer” instruments (used in past to make and conceal corrupt payments)**
 - **No fictitious invoices or other misleading documentation**
 - **No sham transactions**
 - **No payments to any consultants outside country where services are performed or from which he normally conducts business**

Exhibit C - FINANCIAL AND ACCOUNTING DIRECTIONS

- **Reporting system for suspected violations (requires report to responsible Officer, Company CFO, and Company Legal)**

Exhibit D - INTERNAL CERTIFICATION

- **Responsibility of each Responsible Officer (head of each LMC company or business element) to certify compliance with the FCPA and CPS-730 on an annual basis**
- **Vice President and Controller prepares report submitted by Vice President and CFO to Audit and Ethics Committee of Board to certify compliance with the FCPA and CPS-730 on an annual basis**
- **Exhibit D sets forth the form of each Responsible Officer's annual certification to the Vice President and Controller**

Exhibit E - HOSPITALITY GUIDELINES

- **Only apply to hospitality furnished to officials or employees of a foreign government or agency or instrumentality thereof (any company wholly or partially owned by a foreign government)**
- **Hospitality must be directly related to LMC business**
- **Specific U.S. dollar limits for meals and refreshments**
- **Plant visits**
 - **(Basic rule: written invitation and written approval by invitee's superior or obtain legal opinion)**
- **Air shows, rollouts and trade shows**
 - **(Individual legal opinions not required where officials from three or more countries are invited, hospitality is reasonable, not excessive, no improper purpose, and otherwise in accordance with Hospitality Guidelines)**

Exhibit E - HOSPITALITY GUIDELINES

- **No cash gifts or per diem payments**
 - (Exception where required by contract)
- **Product models or other commemorative items**
- **Corporate aircraft**
 - Requires corporate legal approval
- **Spouses and children of foreign officials**
 - General rule: only with company legal approval
- **Quarterly reports to company counsel**

FCPA Red Flags

- Certain high risk countries (as identified by Transparency International Corruption Perception Index)
- Excessive or unusually high compensation
- Request for increase in compensation during sales campaign
- Request for payments to third countries or third parties
- Request for payments in cash or bearer instrument
- Lack of facilities or qualified staff
- Use of shell companies
- Lack of experience or “track record” with product field or industry
- Allegations related to integrity
- Reputation of representative or consultant
- Lack of written agreement
- Close relationships to government officials (close relative or financial/ownership interest)
- Representative or consultant recommended by government official or customer
- Violation of local law or policy (e.g., prohibitions on commissions, currency or tax law violations)
- Misrepresentation or inconsistencies in the application or the due diligence process

Note: These examples, which are not exhaustive, may not in themselves constitute or indicate an FCPA violation, but should always trigger concern and appropriate review by the Legal Dept.

LMC's Due Diligence Process for International Consultants under CPS-704 is designed to help ensure FCPA Compliance

- A. Overview of the process for retaining or renewing an international consultant**
 - 1) Application**
 - 2) References**
 - 3) Disclaimer letter – (letter by which proposed consultant acknowledges he is not authorized to work and won't be paid without written contract)**
 - 4) ICP/Embassy Check**
 - 5) Legal opinion**
 - 6) Regional President recommendation**
 - 7) Personal interview & review of entire file by Corporate Legal**
 - 8) Sign-off by Corporate VP, Business Development**
 - 9) In some cases, CRB or CRC approval is required**

- B. All international consultants are retained at the corporate level by LMOC, not by individual LM companies. This centralization of the consulting process at the corporate level is very important**
- C. Due diligence from different perspectives: company (business and legal), field offices, corporate legal, corporate business development. System of checks and balances**
- D. The effectiveness of LMC's FCPA due diligence process with respect to international consultants is also based on training all employees involved in international business activities.**
 - 1. This includes an on-line interactive training module on international consultants required every three years, supplemented by live training**

2. All international consultants also receive annual ethics training from their agreement monitors, which includes an FCPA compliance component.

E. In addition, LMC's International Consultant Agreements contain a number of key provisions to promote FCPA compliance.

a) Our consultant agreements contain representations and warranties that:

- No payments or gifts have been or will be made, offered, or promised to improperly influence foreign officials;**
- No foreign official has any legal or beneficial interest in such business or in any commission or payment LMC makes;**

- **The consultant will disclose to LMC any payment of, or offer to pay, political contributions, fees or commissions pursuant to ITAR Part 130.12.**
- **The consultant is fully qualified to assist LMC under U.S. and applicable foreign law and has complied with any applicable registration and licensing requirements;**
- **The consultant agrees to comply with applicable laws of the territory (except to the extent inconsistent with or penalized under U.S. law) and not to make or permit to be made, or knowingly allow a third party to make, any improper payments or to perform an unlawful act; and**
- **The consultant agrees to comply with LMC's Code of Ethics and Business Conduct.**

- b) Our consultant agreements also prohibit the consultant from subcontracting, delegating or assigning any of its rights or obligations under the agreement without LMC's prior written consent.**
- c) Our agreements also contain various mechanisms for ensuring that all payments by LMC are made only for services rendered and that reimbursement is made only for reasonable, legitimate expenses actually incurred.**
 - 1. These mechanisms include the right to inspect the consultant's books and records, continuous monitoring of the consultant's performance, the execution of an FCPA disclosure statement, and "claw-back" provisions requiring refund of any payments that are subsequently determined to be improper.**
 - 2. In addition, no payment may be made to a consultant outside the country where a substantial portion of the services are performed or from which the consultant normally conducts**

business, except where specifically approved in writing by the AGC - International or the CRB.

- d) All our consultant agreements have a finite term, not to exceed two years without CRB or CRC approval.**
- e) Our agreements also contain a clause permitting LMC to terminate the agreement without cause with 60 days or less notice**
- f) The also contain a clause stating that the agreement will terminate immediately and all payments that are due (or have been made) will be forfeited if, in rendering services, illegal payments are made or any part of the fee or expenses payable under the agreement is used for an illegal purpose or paid to a third party with knowledge that it will be used for an illegal purpose, or conduct is engaged in that is in violation of local foreign or U.S. law, including specifically the FCPA.**
- g) LMC also has the right to terminate the agreement immediately, inter alia, if it has reason to believe that the consultant has violated the agreement's FCPA-related warranties and certifications.**

CONCLUSION

- A. The foregoing overview of LMC's FCPA compliance program shows that we're trying very hard to prevent violations and ensure FCPA compliance.**
- B. No program is perfect and we are constantly working to improve our compliance program and internal controls.**
- C. A compliance program involves people and is not immune to bad actors, employees who go off on a frolic and detour and decide to break the law, notwithstanding our requirements to the contrary.**
- D. We tell all employees and consultants that there is no "wink" in our compliance program and illegal and unethical behavior won't be tolerated. We tell them that if we can't sell our products and services**

in accordance with U.S. law, the law of the foreign country, and our Code of Ethics, we don't want to make the sale. We mean it and we have lost sales because of it.

- E. Finally, the most important thing about an effective compliance program is that it can't just be words and policies in a binder kept on the shelf. All employees and consultants must know the rules and must be committed to complying with them in practice.**
- F. This is a matter of creating and maintaining a corporate culture of compliance, a commitment to do things legally and ethically, without which all the codes and policies in the world are useless.**
- G. LMC is committed to such legal and ethical compliance as a matter of good business and ethical conduct. We believe that ethical conduct is good business.**