Hotel Lawyer with the new “Guide” for international hotel transactions — doing business abroad or with foreigners

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Hotel Lawyer with the new “Resource Guide to the U.S. Foreign Corrupt Practices Act”

In the last few years, a lot of hotel transactions have been completed in foreign countries or involving foreign investors. The significance of international hotel transactions has soared and many businesses have found that some of the most attractive opportunities involve crossing international borders.

On November 14, 2012, the US Department of Justice (DOJ) and the Securities & Exchange Commission (SEC) issued a 130-page document which is the most comprehensive effort by these agencies to provide long-awaited guidance to respond to complaints from companies that have complained about the ambiguity of the Foreign Corrupt Practices Act (FCPA).

The article below is by hotel lawyer Bob Braun, a senior member of JMBM’s Global Hospitality Group®, who has been spending more of his time lately representing owners, developers and investors in international investments and transactions involving hotels, resorts, mixed-use developments and other hospitality-related projects. In this article, he reminds us why the FCPA should always be at the top of our minds when we pursue international transactions, as he gives us the background on the FCPA and the significance of the new Guide from the DOJ and SEC.

Hotel transactions in foreign countries or involving foreigners

Can you buy someone a cup of coffee or is that a bribe?

by

Robert E. Braun | Hotel Lawyer

The hospitality industry is a global business, but few in the industry, other than the larger players, consider whether seemingly innocuous contacts can violate federal law – but that is exactly the case.

Investigation showed significant bribery and foreign corrupt practices

During the 1970s, the Securities and Exchange Commission conducted a multitude of investigations resulting in more than 400 U.S. companies admitting that they made questionable or illegal payments to foreign government officials, politicians, and political parties. These payments ranged from outright bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called “facilitating payments” that were made to ensure that government functionaries simply did their jobs. Probably the most famous of these was the “Bananagate” scandal, in which Chiquita Brands bribed the President of Honduras to lower taxes.

Congress enacts anti-bribery law
As a result Congress enacted the Foreign Corrupt Practices Act of 1977, with the goal of halting the bribery of foreign officials and restoring public confidence in the integrity of the American business system. The anti-bribery provisions of the FCPA apply to all U.S. persons and certain foreign issuers of securities, as well as to foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States.

One of the unintended results of the FCPA is to create uncertainty as to when a friendly gesture — a gift to a business contact — becomes a bribe. And since government and business is intertwined in so many countries, it has become increasingly difficult for business to comply with the FCPA.

Response to uncertainty

In response to this uncertainty, on November 14, 2012, the Department of Justice and the Securities and Exchange Commission released a document that, they hope, will serve as a desk reference for companies big and small as they work to prevent bribery in global business dealings. Robert Khuzami, director of enforcement at the SEC, told reporters during a press conference that “Public company officers can put this on their desk . . . and understand what it is we're doing in this space, and run their companies accordingly.”

Entitled “A Resource Guide to the U.S. Foreign Corrupt Practice Act” the document weighs in at 130 pages, including hypothetical examples and 418 endnotes. The Justice Department has also circulated a fact sheet, which summarizes the full guide, highlighting discussions of gifts, travel, and entertainment; who constitutes a “foreign official”; successor liability; and matters the agencies have declined to pursue. Another notable section of the guidance deals specifically with the common “hallmarks” of effective compliance programs.

Practical impact of the Guide?

The practical impact of the Guide is unclear. Some have suggested that it doesn’t do enough to fill in the gray spaces in the law, and industry groups, like the US Chamber of Commerce, continue to push for a broad revision to the FCPA. In the interim, the guide may provide some useful advice to those who are unfamiliar with the scope of the FCPA.

Oh, by the way, is it a bribe when you buy a government official a cup of coffee while you are doing a deal in that country? The Guide answers that question, and a few others. Fortunately, under most circumstances, a cup of coffee is just a cup of coffee. It is not a bribe.

Download your free copy of the Guide

Download your free copy of the Guide at www.HotelLawyer.com (click the tab for RESOURCE CENTER and then the link to “Industry Presentations) or by clicking “Resource Guide to the U.S. Foreign Corrupt Practices Act”.

Jim Butler, Chairman
Global Hospitality Group®
Jeffer Mangels Butler & Mitchell LLP
(310) 201-3526 • JButler@jmbm.com
www.HotelLawyer.com
Robert Braun is a senior member of the Global Hospitality Group® at JMBM. Mr. Braun advises hospitality clients with respect to hotel management agreements, franchise agreements and operating issues. He also advises on transactional matters, including formation, financing, and joint ventures, and works with companies on their data technology, privacy and security matters, such as software licensing, cloud computing, e-commerce, data processing and outsourcing agreements for the hospitality industry. He is a member of the International Association of Privacy Professionals. Contact him at 310.785.5331 or rbraun@jmbm.com.

This is Jim Butler, author of www.HotelLawBlog.com and hotel lawyer, signing off. We’ve done more than $87 billion of hotel transactions and have developed innovative solutions to help investors be successful in bidding for hotel acquisitions, and helping investors and lenders to unlock value from troubled hotel transactions. Who’s your hotel lawyer?

Our Perspective. We represent hotel lenders, owners and investors. We have helped our clients find business and legal solutions for more than $87 billion of hotel transactions, involving more than 3,900 properties all over the world. For more information, please contact Jim Butler at jbutler@jmbm.com or +1 (310) 201-3526.

Jim Butler is a founding partner of JMBM, and Chairman of its Global Hospitality Group® and Chinese Investment Group™. Jim is one of the top hospitality attorneys in the world. GOOGLE “hotel lawyer” and you will see why.

Jim and his team are more than “just” great hotel lawyers. They are also hospitality consultants and business advisors. They are deal makers. They can help find the right operator or capital provider. They know who to call and how to reach them.