

ADMINISTRATION BILL

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the International Anti-Bribery Act of 1998.

SECTION 2. TABLE OF CONTENTS

The table of contents of this Act is as follows:

Sec. 1 Short title.

Sec. 2 Table of contents.

Sec. 3 Amendments to the Foreign Corrupt Practices Act governing issuers.

Sec. 4 Amendments to the Foreign Corrupt Practices Act governing domestic concerns.

Sec. 5 Amendments to the Foreign Corrupt Practices Act governing other persons.

SECTION 3. AMENDMENTS TO THE FOREIGN CORRUPT PRACTICES ACT GOVERNING ISSUERS.

(a) Prohibited conduct. -- Section 78dd-1 of title 15, United States Code, is amended --

(1) in paragraph (a) (1)(A), by striking "or" following "in his official capacity," and by adding "or (iii) securing any improper advantage," following "lawful duty of such official,";

(2) so that paragraph (a)(1)(A) reads as follows:

"(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";

(3) in paragraph (a)(2)(A), by striking "or" following "in its or his official capacity," and by adding "or (iii) securing any improper advantage, or" following "lawful duty of such party, official, or candidate";

(4) so that paragraph (a)(2)(A) reads as follows:

"(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";

(5) in paragraph (a)(3)(A), by striking "or" following "in his or its official capacity," and by adding "or (iii) securing any improper advantage," following "lawful duty of such foreign official, political party, party official, or candidate";

(6) so that paragraph (a)(3)(A) reads as follows:

"(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) Officials of International Organizations. -- Section 78dd-1(f) of title 15, United States Code, is amended--

(1) in paragraph (1) by inserting "(A)" preceding "The term 'foreign official'", by inserting "or of a public international organization," following "or instrumentality thereof," and by inserting ", or for or on behalf of any such public international organization" following "any such government or department, agency, or instrumentality";

(2) so that paragraph (1) reads as follows:

"(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.";

(3) by inserting after paragraph (1) the following:

"(B) For purposes of paragraph (1)(A), the term "public international organization" means an organization that has been designated by Executive Order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288)."

(c) Alternative Jurisdiction over acts outside the United States. -- Section 78dd-1 of title 15, United States Code, is amended

(1) by adding at the end the following:

"(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 78l 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 that is a U.S. person, 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 (a)(1), (2), and (3) 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, a 'U.S. 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."

(2) in paragraph (b) by replacing "Subsection" with "Subsections" and by inserting "and (g)" after "(a)"; and

(3) in paragraph (c) by replacing "subsection" with "subsections" and by inserting "and (g)" after "(a)".

(d) Penalties-- Section 78ff(c) of Title 15, United States Code, is amended--

(1) in paragraph (1)(A), by replacing "section" with "sections" and inserting "or (g)" following "78dd-1(a)";

(2) in paragraph (1)(B), by replacing "section" with "sections" and inserting "or (g)" following "78dd-1(a)";

(3) so that paragraph (1) reads as follows:

"(1)(A) Any issuer that violates sections 78dd-1(a) or (g) of this title shall be fined not more than \$2,000,000.

(B) Any issuer that violates sections 78dd-1(a) or (g) of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.";

(4) in paragraph (2)(A), by deleting "or" and inserting "," following "officer"; by adding ", employee, or agent" following "director"; by replacing "section" with "sections"; and by inserting "or (g)" following "78dd-1(a)";

(5) by deleting paragraph (2)(B);

(6) in paragraph (2)(C) by replacing at the beginning "(C)" with "(B)"; by replacing "section" with "sections"; and by inserting "or (g)" following "78dd-1(a)";

(7) so that paragraph (2) reads as follows:

"(2)(A) Any officer, director, employee, or agent of an issuer, or stockholder acting on behalf of such issuer, who willfully violates section 78dd-1(a) or (g) of this title 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 section 78dd-1(a) or (g) of this title shall be subject to a civil penalty of not more than \$10,000 imposed in an action brought by the Commission.".

SECTION 4. AMENDMENTS TO THE FOREIGN CORRUPT PRACTICES ACT GOVERNING DOMESTIC CONCERNS.

(a) Prohibited conduct. -- Section 78dd-2 of title 15, United States Code, is amended --

(1) in paragraph (a) (1)(A), by striking "or" following "in his official capacity," and by adding "or (iii) securing any improper advantage," following "lawful duty of such official,";

(2) so that paragraph (a)(1)(A) reads as follows:

"(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";

(3) in paragraph (a)(2)(A), by striking "or" following "in its or his official capacity," and by adding "or (iii) securing any improper advantage, or" following "lawful duty of such party, official, or candidate";

(4) so that paragraph (a)(2)(A) reads as follows:

"(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";

(5) in paragraph (a)(3)(A), by striking "or" following "in his or its official capacity," and by adding "or (iii) securing any improper advantage," following "lawful duty of such foreign official, political party, party official, or candidate";

(6) so that paragraph (a)(3)(A) reads as follows:

"(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) Penalties-- Section 78dd-2(g) of Title 15, United States Code, is amended--

(1) in paragraph (1)(A), by replacing "subsection" with "subsections" and inserting "or (i)" following "(a)";

(2) in paragraph (1)(B), by replacing "subsection" with "subsections" and inserting "or (i)" following "(a)";

(3) so that paragraph (1) reads as follows:

"(1)(A) Any domestic concern that violates subsections (a) or (i) of this section shall be fined not more than \$2,000,000.

(B) Any domestic concern that violates subsections (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."

(4) in paragraph (2)(A), by deleting "or" and inserting "," following "officer" by adding ", employee, or agent" following "director", by replacing "subsection" with "subsections", and by inserting "or (i)" following "(a)"

(5) by deleting paragraph (2)(B);

(6) in paragraph (2)(C), by replacing at the beginning "(C)" with "(B)", by replacing "subsection" with "subsections", and by inserting "or (i)" following "(a)";

(7) so that paragraph (2) reads as follows:

"(2)(A) Any officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsections (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 officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern, who violates subsections (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."

(c) Officials of International Organizations. -- Section 78dd-2(h) of title 15, United States Code, is amended--

(1) in paragraph (2) by inserting "(A)" preceding "The term 'foreign official'", by inserting "or of a public international organization," following "or instrumentality thereof," and by inserting ", or for or on behalf of any such public international organization" following "any such government or department, agency, or instrumentality";

(2) so that paragraph (1) reads as follows:

"(2)(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."

(3) by inserting after paragraph (2) the following:

"(B) For purposes of paragraph (2)(A), the term "public international organization" means an organization that has been designated by Executive Order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288)."

(d) Alternative Jurisdiction over acts outside the United States. -- Section 78dd-2 of title 15, United States Code, is amended

(1) by adding at the end the following:

"(i) Alternative Jurisdiction

(1) It shall also be unlawful for any U.S. 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, 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 (a)(1), (2), and (3) of this section, for the purposes set forth therein, irrespective of whether such U.S. 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 "U.S. 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."

(2) in paragraph (b) by replacing "Subsection" with "Subsections" and by inserting "and (i)" following "(a)";

(3) in paragraph (c) by replacing "subsection" with "subsections" and by inserting "and (i)" following "(a)"; and

(4) in paragraph (d)(1) by replacing "subsection" with "subsections" and by inserting "and (i)" following "(a)".

(e) Technical Amendment. -- Section 78dd-2(h)(4)(A) of title 15, United States Code, is amended by deleting "For purpose of paragraph (1)," and by replacing "the" with "The" at the beginning of the subsection.

SECTION 5. AMENDMENTS TO THE FOREIGN CORRUPT PRACTICES ACT REGARDING OTHER PERSONS.

Title 15, United States Code, is amended by adding a new section 78dd-3 as follows:

"Prohibited foreign trade practices by persons other than issuers or domestic concerns

(a) Prohibition

It shall be unlawful for any person other than an issuer or a domestic concern, as defined in sections 78dd-1 and 78dd-2 of this title, 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

(i) to make use of the mails or any means or instrumentality of interstate commerce or

(ii) to do any other act

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 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 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 a 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 are 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 process 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.

(g) 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 juridical person, such fine may not be paid, directly or indirectly, by such juridical 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 (as defined in 8 U.S.C. § 1101) 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)(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 paragraph (1)(A), the term "public international organization" means an organization that has been designated by Executive Order pursuant to Section 1 of the International Organizations Immunities Act (22 U.S.C. § 288).

(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 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 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."