

# Gifts, Conflicts & Corruption: An Interplay of Risks and Best Practices to Address Them

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## Today's Session

- **Overlapping Risk Areas:**
  - Conflicts of Interest
  - Gifts & Business Entertainment
  - Bribery & Corruption
- **FCPA Cases Spotlight Increased Scrutiny of Policies, Processes & Training**
- **Hypotheticals**
  - Dinner on Us
  - City Donation
  - Cannes Film Festival
  - Gifting Chinese Mooncakes
- **Best Practices**
  - Designate Sr. Execs as Gifts & Entertainment Approvers
  - Annual Gifts & Business Entertainment Plans for High-Risk Groups
  - Annual Conflicts of Interest Disclosure
  - Online 3<sup>rd</sup> Party Intermediary Management System
  - 3<sup>rd</sup> Party Anti-Corruption Contractual Safeguards
  - Auditing

# Conflicts of Interest

3

## Comcast/NBCUniversal Conflict of Interest Policy B

All employees must disclose and obtain approval for all outside work, financial interests and other personal activities/relationships that may create or appear to create a conflict

### WHAT TO KNOW:

- Even if nothing wrong is intended, appearance of a COI can have negative effect
- ALWAYS consider how your actions may appear and avoid perception of a COI
- Owning a financial interest in an outside business that has current/potential business relationship w/company may be COI if you can influence success of that business or affect company's relationship w/outside business
- COI can arise if you have ability to influence company decisions relating to employment or business activities that affect family members

### WHAT TO DO:

- Complete annual COI questionnaire (*See Best Practices section*)
- Avoid personal activities/relationships that may conflict w/your job responsibilities or compromise company interests
- Do not use company info, resources, time, etc. for personal benefit
- Do not direct business to an outside business that you or a family member own/manage
- Get appropriate approvals before engaging in any activities that could pose COI

4

# Gifts & Business Entertainment

5

## Comcast/NBCUniversal Gifts & Business Entertainment Policy B

All gifts/business entertainment **must be** (1) **consistent w/company's business interests and customary practices**; (2) **reasonable by local/industry standards**; (3) **infrequent**; (4) **given/accepted without expectation of reciprocity** and (5) **compliant w/all laws and regs**

### WHAT TO KNOW:

- Offer or acceptance of gifts or business entertainment can create appearance that business decisions are being influenced by other factors
- "Gift" is anything of tangible or intangible value
- "Business entertainment" includes meals, entertainment and events, if attended by donor and business matters are discussed; usually preferable to gifts

### WHAT TO DO:

- Get prior approval in certain circumstances (*e.g.*, gifts over \$250)
- Never offer or accept cash gifts
- Ensure gifts/entertainment comply w/any \$\$ limits set by your business
- Never offer or accept gifts or business entertainment to influence a business decision or obtain/retain a business advantage

6

## Comcast/NBCUniversal Gifts & Business Entertainment Policy (cont.)

When interacting **with gov't officials**, employees must adhere to the highest ethical standards and comply w/all applicable laws and regs

### WHAT TO KNOW:

- Providing gov't officials w/gifts, entertainment or travel may indicate improper intent, raise bribery concerns and violate applicable laws and recipient's gift policies
- Violations of anti-corruption laws or gov't gift policies has potentially severe implications for both company, its affiliates and employees

### WHAT TO DO:

- **All** employees must obtain proper pre-approvals before offering **any** travel, gifts or entertainment or any tangible/intangible items to gov't officials **irrespective of value**
- Advance legal review required to ensure proposed entertainment or gift conforms w/laws and policies covering recipient
- Obtain pre-approval from sr. legal counsel of all gifts, travel or entertainment involving gov't officials
- Where feasible, obtain written confirmation from officials that acceptance is permissible under their agency's policies

7

# Corruption

8

## Comcast/NBCUniversal Anti-Corruption Policy



Never offer, promise, pay or authorize, directly or indirectly, **anything of value** (e.g., gifts, entertainment, discounts, meals, travel, goods or services) to any **public official, supplier, contractor** or **other business partner or customer** to influence an official decision or obtain or retain an improper advantage. A business courtesy should never be offered under circumstances **that might create even an inference of an impropriety.**



Never donate or use any company funds or other assets for **political purposes** without prior written approval. **Political contributions** are **generally prohibited.**



Conduct appropriate due diligence, obtain senior-level approvals and include **strong anti-corruption contractual representations** when appointing **any person or firm to represent company in dealing with any gov't officials** (e.g., consultants, agents, sales reps, distributors) or in **M&A and JV deals.**

9

## FCPA Cases Spotlight Increased Scrutiny of Policies, Processes & Training

10

# AVON



11

**\$135M fines & penalties**

**\$500M investigative costs**

**3-year DPA + compliance monitor**

- Allegations included:
  - ✓ \$8M worth of payments in cash, gifts, travel, entertainment to various PRC officials from whom Avon needed approval for direct selling in PRC (e.g., U.S./European travel, Luis Vuitton merchandise, Gucci bags, Tiffany pens)
  - ✓ Gifts included large no. of meals (~9,600), each meal under US\$200
  - ✓ Meals and gifts not recorded in detail or monitored by company
- Inadequate corporate record-keeping and internal controls
- Payments falsely described in records to conceal gov't-related expenses
- Paid 3<sup>rd</sup> party consultant substantial sums for vague and unknown services
- Inadequate internal response; internal audit identified FCPA issues in '05 but investigation did not begin until '08; many execs knew of payments but failed to stop them or actively covered them up

# BHP Billiton



## **BHP paid \$25M penalty to SEC for violating FCPA internal controls provisions by sponsoring attendance of foreign gov't officials at 2008 Summer Olympics**

- BHP an official sponsor of 2008 Beijing Summer Olympics
  - 650 invitees, incl. 176 gov't officials (98 reps of state-owned entities that were BHP customers)
  - 60 gov't invitees ultimately attended, 24 brought spouses or guests
  - Many from African and Asian countries w/known corruption risk
  - Packages worth \$12-16K (3-4 nights, lux hotels, event tix, sightseeing trips)
  - Purpose: "maximize [Olympics] investment by strengthening relationships w/key local and global stakeholders"
- BHP Olympics Global Hospitality Program
  - BHP employee w/ knowledge of invitees' relationship w/co. completed detailed application
  - Approved by division or country president
- SEC found BHP failed to maintain sufficient internal controls over Program
  - No independent legal or compliance review of applications
  - Some applications inaccurate or incomplete
  - No specific training on how to complete hospitality forms or evaluate bribery risks of invites
  - No process to update or reassess invitations if conditions changed
  - Failure to coordinate among different depts; no review outside business unit issuing invitation

**"A check-the-box approach of forms over substance is not enough to comply with the FCPA"**  
– Antonia Chion, Associate Director of SEC Enforcement Division

12



BNY MELLON

## Bank of New York Mellon

**\$14.8 million to settle allegations that it violated FCPA's anti-bribery and internal controls provisions by corruptly providing internships to relatives of foreign gov't officials affiliated w/ Middle East sovereign wealth fund**

- Offered internships to family members of gov't officials in order to retain business w/ sovereign wealth fund
- Did not adhere to existing, stringent hiring standards, which required minimum GPA and multiple interviews
- Few controls around hiring customers and relatives of customers
  - ✓ Wide discretion for sales employees in hiring
  - ✓ HR not trained to spot red flags
  - ✓ No review by legal or compliance

**Cross-Functional (HR, Finance, Legal) Policy review necessary to ensure compliance with FCPA and Anti-Corruption laws**

13

# Hypotheticals

14

## Dinner on Us

We have been working closely with the French Board of Tourism to get them to advertise on our air. When the Tourism Board's procurement officer advises that she will be in town, we schedule an expensive dinner – a great opportunity to build the relationship and discuss the possibility of more business.

Any problems?

Can we ask her husband to join us?



While at dinner, the Tourism Board official mentions that she's planning a trip to Los Angeles and is hoping to take her family to Universal Studios theme park. She hints that an all access pass (available to the public for \$80 per person) would be very much appreciated and could "seal the deal". Any problems?

What if, instead of the "seal the deal" comment, she states that the Tourism Board might be interested in purchasing billboard space at the park. Does this change the analysis?

When desert arrives, she mentions that her son recently applied for a position with the NBC News Bureau in Paris. She asks if anything can be done to move his resume to the top of the pile.

What do you say?

15 P15

## City Donation

We are filming the Real Housewives of Bulgaria and would like to shoot several days of footage in a public park in the city of Sophia. The mayor's office advises that the city does not accept a fee for issuing a location permit, but instead would suggest the production donate 5 new computers to the Beautification of Sophia Society, at a cost of approximately \$10,000.

- Any problems?

In the course of filming, a fight breaks out between two of the Housewives and the Sophia police get involved. They are very cooperative in allowing the production to film officers in uniform doing their jobs (breaking up the fight, restoring order, etc.).

- Can we offer a "thank you" gift to the officers of \$100 cash?
- Can we invite the officers to the wrap party after the shoot?
- Can we pay the officers to appear in promotional photos and to promote the show on social media?

The mayor of Sophia shows up uninvited at the wrap party and takes several photos with the Housewives.

- Any problems?

16 P16



## Cannes Film Festival

The company's sales executives in Spain would like to invite their clients, employees of a state-owned broadcaster, to the Cannes Film Festival. The invitation allows each client to bring a guest of his /her choice, and some clients are bringing their spouses.

The company wants to offer overnight hotel at a 5-star hotel, along w/hospitality (meals, incidental refreshments) during 2 days of festival-related events. Although the invitation doesn't offer to pay for flights, the marketing team has agreed to pay for business-class airfare for those clients who request it.

- Any issues here?
- Can we offer guests a "goody bag" with Company-branded hats, t-shirts, water bottles and other items?
- What if the sales execs would also like to offer a third day of sightseeing on a yacht with meals included?



17

## Gifting Chinese Mooncakes

Chinese mooncakes – a traditional pastry filled w/salted duck egg yolk and lotus seed paste containing 800+ calories – are a popular seasonal gift in China, and it is customary to exchange boxes of mooncakes during the mid-autumn festival to show respect and build relationships.

The company's sales executives in China would like to offer boxes of mooncakes (4 pieces in a box), worth \$50 each, to its Chinese clients, who are employed by state-owned agencies. No other gifts or hospitality have been offered to them this year.

Chinese regulations prohibit accepting gifts that might affect an official's impartiality. Various regional rules require officials to register gifts valued at a certain level and turn them over to the authorities. For example, in Beijing, any gifts above 200RMB (~\$32) must be registered and turned over to the Treasury. The onus and liability lie solely w/the recipient.

Can they give the mooncake boxes? What steps should they take if they wanted to do so?



18

# Best Practices

19

## Designate Sr. Execs as Gift & Entertainment Approvers

### Designate senior-level, business unit execs for gift/entertainment pre-approvals

#### Who Should Approve?

• **Senior Business Leaders** who can interpret/make decisions under Gifts & Entertainment Policy

#### • Examples of Designated Approvers:

- ✓ President/business unit leader
- ✓ CFO
- ✓ Business unit senior lawyer

#### Other Best Practices:

- Designate sr. level lawyer (*e.g.*, GC) for **Gov't Gifts and Entertainment**
- Business unit **guidelines and/or \$\$ limits**
- Online workflow for tracking, approvals (*e.g.*, gov't officials)

#### Establish \$\$ thresholds requiring pre-approval by Designated Approver, *e.g.*:

- Offering or accepting gifts over certain amt per person or entity (*e.g.*, \$250), per year
- Offering/accepting travel connected to business entertainment over a certain amount (*e.g.*, \$250)
- Accepting business entertainment over a certain amount (*e.g.*, \$250) for a personal guest or family member



20

## Annual Gifts & Business Entertainment Plans for High-Risk Groups

- Business units that regularly offer gifts & business entertainment to gov't customers and partners should create and obtain legal approval for a **formal annual gift & entertainment plan**:
  - Each gov't customer/partner
  - Number of anticipated gifts/meals per customer/partner
  - Number of invitees for each meal or other event
  - \$\$ costs for all gifts/meals
  - Gifts & entertainment tied to specific events (*e.g.*, conferences, holidays)
  - Total proposed spend per customer/partner
  - Any local law or recipient's policy issues

### Other Best Practices for High-Risk Groups:

- Review local country laws, recipient's policies to ensure compliance, plan reflects any \$ limits; request written confirmation from recipient if necessary
- For any gifts & entertainment outside of annual plan, obtain separate legal review and approval from sr. lawyer/GC

21

## Annual Conflicts of Interest Disclosure

- **All** FT staff employees required to complete COI Questionnaire annually
- COI Questionnaire provides opportunity to disclose outside work, financial interests and other potential conflicts of interest
- If employee answers "no" to all questions, no further disclosures or follow-up required
- If answer is "yes" to any question, HR follows up w/employee to obtain add'l info, review and approvals
- Manager approval **always** required after careful review all key facts/circumstances
  - Other approvals may be required (*e.g.* Sr.. HR Manager, Head of HR); consider whether conditions for approval are necessary (*e.g.* recusal)
- Best Practice: use **online** COI Questionnaire for centralized, accessible recordkeeping, follow-up by HR

22

## Annual Conflicts of Interest Disclosure (cont.)

### Sample Disclosure Questions:

1. Do you have an **interest in an Outside Business** w/a current or potential business relationship w/the Co.?
2. During last 12 months, have you **solicited or accepted any offer to acquire securities of an Outside Business** if the Outside Business has a current or potential business relationship w/ the Co.?
3. Are you **employed by an Outside Business**?
4. Are you currently an **elected or appointed public official** or candidate for a national, state or local office?
5. Are you in a position at the Co. to make **employment decisions regarding a Family Member**?
6. Catch-all: do you have any **other interests or outside activities** that may present an actual or perceived conflict with your job responsibilities?

### Consider company/industry-specific questions, e.g.:

1. Are you involved in **outside writing**, blogging, teaching or other activities that draw on **confidential information** of the Co. gained as part of your employment w/the Co.?

23

## Online 3<sup>rd</sup> Party Intermediary Management System

### **Customized online database ensures proper, consistent due diligence & controls over 3<sup>rd</sup> parties**

- Evaluates risk, assigns risk rating based on identified risk factors:
  - Territory risk (e.g., Transparency Int'l Corruption Perception rating)
  - Gov't interaction
  - Payment method (e.g., pre-determined flat fee vs. commission)
  - Other risk factors presented by agreement, e.g.:
    - What % of business will come from our Company?
    - Is third party publicly traded/listed on a stock exchange?
    - Are business expenses reimbursed or offset against payments due?
    - Will third party be collecting money on our behalf?
- Risk rating drives due diligence and other next steps:
  - Background checks (e.g., Level 1/database research vs. Level 2/deep dive, reference checks)
  - Training (Provide copy of code & obtain signed acknowledgment vs. in-person training)
  - Contractual Safeguards
  - Approvals (e.g., business leader, CFO & lead business lawyer; higher-level for high-risk deals)
  - Monitoring & Auditing (e.g., quarterly watchlist checks, annual vs. bi-annual audits)
  - Annual Refresh (e.g., conduct new risk assessment annually vs. bi-annually)

24

## 3<sup>rd</sup> Party Anti-Corruption Contractual Safeguards

### Ensure 3<sup>rd</sup> Party Contracts Contain Appropriate Anti-Corruption Obligations:

- Compliance w/FCPA, all other applicable anti-corruption laws
- Prohibition on improper payments
- Inform Company of any change in ownership/bank details, assigned employees
- No assignment or subcontracting without Company's written approval
- No gov't anti-corruption investigation in past 5 years
- Obligation to maintain accurate and reasonably detailed books and records
- Right to conduct on-site compliance audit
- Immediately inform Company if suspected violation of anti-corruption laws
- Immediate termination for material breach; w/out cause termination rt. w/30 days notice
- No current gov't owners or gov't control
- Conduct anti-corruption diligence on any 3<sup>rd</sup> parties performing services; train 3<sup>rd</sup> parties on anti-corruption policy, impose similar anti-corruption contract requirements
- No gifts & entertainment to gov't officials w/out Company pre-approval

25

## Auditing

### Conduct targeted testing and supporting document reviews of employee, 3<sup>rd</sup> party expenses related to gifts/travel/entertainment and charitable donations

Audit frequency depends on deal and territory risk levels; may need to occur outside regular schedule if red flags identified during contract term

#### Factors to consider during 3<sup>rd</sup> Party audits:

- Gov't Interactions (*e.g.*, obtain list of staff who deal w/gov't officials)
- Testing:
  - Obtain schedule of gifts, entertainment expenses, charitable donations, political donations; review items that look inconsistent w/acceptable business practice
  - Review any payments made via petty cash accounts & controls around such disbursements
  - Identify any offshore bank account payments, payments in different currencies
  - Review unusual payments, *e.g.*, upfront payments, abnormal commissions, price cuts, payment in countries other than where agent is based, midstream requests for add'l comp
- Assess any deal-specific controls req'd by contract or as condition of deal approval

#### Factors to consider in connection w/employee T&E audits:

- Review T&E of employees in businesses who deal w/gov't officials
  - Follow up on any red flags (*e.g.*, expenses that do not appear in line w/acceptable business practice, are in bad taste or create an appearance of impropriety)

26

# Questions?

27