

Business Conduct and Ethics

OCS Advisory Board
Summer Seminar
June 19, 2014

Agenda

- ▶ Land Professional Defined
- ▶ Business Ethics
- ▶ AAPL Code of Ethics and Standards of Practice
- ▶ Antitrust Concerns
- ▶ Foreign Corrupt Practices Act
- ▶ Examples
- ▶ Questions



AAPL's Code of Conduct

The American Association of Professional Landmen (AAPL) has provided the following definition for the professional landman/land professional:

- “Land Professional” shall mean a person who derives a significant portion of his/her income as a result of performing “Landwork.”

“Landwork” shall mean the actual performance or supervision of any one or more of the following functions:

- A. Negotiating for the acquisition or divestiture of mineral rights
- B. Negotiating business agreements that provide for the exploration for and/or development of minerals
- C. Determining ownership in minerals through the research of public and private records
- D. Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership in minerals
- E. Managing rights and/or obligations derived from ownership of interests in minerals
- F. Unitizing or pooling of interests in minerals

(Note: Offshore – negotiating and drafting joint venture and other contracts)

Webster's Definition – Ethics

“The discipline dealing with what is good and bad and with moral duty and obligations. A set of moral principles or values. A theory or system of moral values. The principles of conduct governing an individual or a group.”

*There are 7 things that will destroy us:
Wealth without work; Pleasure without
conscience; Knowledge without character;
Religion without sacrifice; Politics
without principle; Science without
humanity; Business without*

ethics

mahatma gandhi

Professional Ethics

- ▶ Land Professional ethics encompass the personal, organizational and corporate standards of behavior expected as Landmen.
 - ▶ Land Professionals are those of us who work in a position where we exercise special knowledge and skills to support our companies in the oil and gas industry.
 - ▶ Land Professionals should have the capability of making judgments, applying their skills and reaching informed decisions in situations that the general public cannot.
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What happens if you don't act Ethically?

- ▶ Serious problems for yourself and company
- ▶ Harm to the profession
- ▶ Reputation damaged
- ▶ Lose of ability for repeat business
- ▶ People avoid you
- ▶ Difficult to predict how a lapse in ethical behavior will come back to haunt you in the future
- ▶ Extremely difficult to regain lost respect and credibility, if ever



Why act Ethically?

- ▶ Eliminate future problems
- ▶ Become a partner of choice in industry
- ▶ Good reputation (word travels fast)
- ▶ Open doors in the future
- ▶ There is personal satisfaction in gaining respect through honest/fair dealings



“It takes 20 years to build a reputation and five minutes to lose it.”

Warren Buffet

Reputation is Critical

▶ Every Land Professional

- should strive to develop and maintain a strong reputation for being fair and honest
- must have integrity
- must be trustworthy
- must continuously reinforce core values throughout one's career

“Our values guide our actions in conducting business in a socially responsible and ethical manner.”



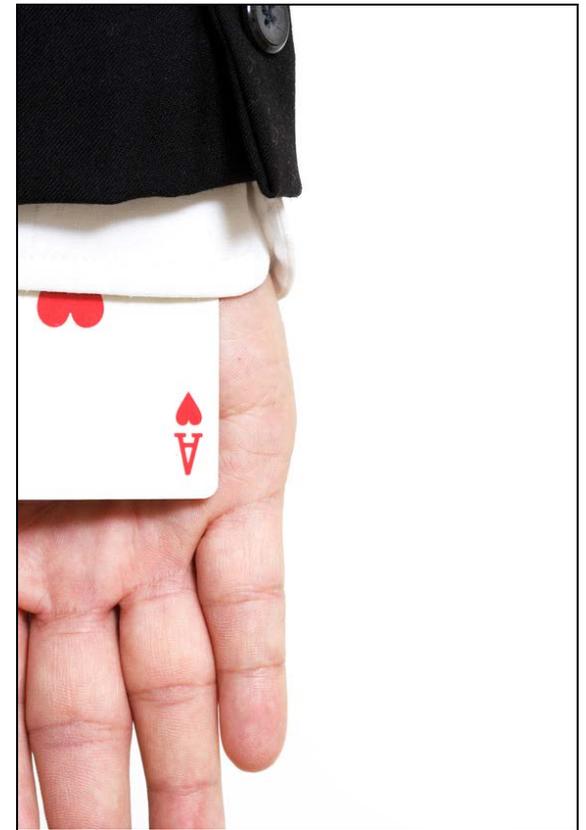
Testing our Judgment

- ▶ Before you act ask yourself:
 - Is this legal?
 - Is this consistent with my core values?
 - If this was made public, would I be comfortable?



What is not Ethical

- ▶ Lying
- ▶ Cheating
- ▶ Stealing
- ▶ Falsely Accusing
- ▶ Misrepresenting
- ▶ Stretching the Truth
- ▶ Intentionally withholding critical information
- ▶ Deceiving someone
- ▶ Unlawful activity



What is Ethical

- ▶ Being honest
- ▶ Fair
- ▶ Getting the best deal
- ▶ Negotiating Upfront
- ▶ Maintaining a Competitive Advantage
- ▶ Not putting all your cards on the table
- ▶ Using Good judgment
- ▶ Closing a deal
- ▶ Knowing when to walk away with or without the deal



Example 1



American Association of Professional Landmen



Land Professionals

▶ Land Professionals:

Bylaws of American Association of Professional Landmen ("AAPL"), adopted June 16, 1978, amended June 11, 1999. Article V. Section 3.A.4 – An applicant must execute such documentation as AAPL may require demonstrating the applicant's willingness to be bound by and abide within the *AAPL Code of Ethics and Standards of Practice*.



AAPL Code of Ethics Bylaws – Article XVI

- ▶ The *Code of Ethics* shall be the *basis of conduct, business principles and ideals* for the members of the AAPL; and it shall be understood that conduct of any member of the Association *inconsistent* with the provisions set forth in the Code of Ethics shall be *considered unethical* and said individual's membership status shall be subject to review for possible disciplinary action as prescribed in Article XVII of AAPL's Bylaws.
- ▶ In the area of human endeavor involving trading under competitive conditions, *ethical standards for fair and honest dealing can be made increasingly meaningful by an association organized and dedicated not only to the definition, maintenance, and enforcement of such standards*, but to the improvement and education of its members as set out in the Standards of Practice. Such is the objective of the AAPL and such is its public trust.

AAPL Code of Ethics

Section 1.

It shall be the duty of *the Land Professional at all times to promote and, in a fair and honest manner*, represent the industry to the public at large with the view of establishing and maintaining goodwill between the industry and the public and among industry parties.

The Land Professional, in his *dealings with landowners*, industry parties, and others outside the industry, *shall conduct himself in a manner consistent with fairness and honesty*, such as to maintain the respect of the public.

Section 2.

Competition among those engaged in the mineral and energy industries shall be kept at a high level with careful adherence to established rules of honesty and courtesy.

A Land Professional *shall not betray his partner's, employer's, or client's trust* by directly turning confidential information to personal gain.

The Land Professional *shall exercise the utmost good faith and loyalty to his employer (or client)* and shall not act adversely or engage in any enterprise in conflict with the interest of his employer (or client). Further, he shall act in good faith in his dealings with the industry associates.

The Land Professional *shall represent others in his areas of expertise* and shall not represent himself to be skilled in professional areas in which he is not professionally qualified.

Example 2



AAPL Code of Ethics

The standard of professional conduct, guiding principles and ideals mandated by the Code of Ethics within the AAPL Bylaws are summarized as follows:

- A. Fair and honest dealing with landowners, industry associates and the general public so as to preserve the integrity of the profession (Article XVI, Section 1);
- B. Adherence to a high standard of conduct in fulfilling his fiduciary duties to a principal (Article XVI, Section 2);
- C. Avoiding business activity, which may conflict with the interest of his employer or client or result in the unauthorized disclosure or misuse of confidential information (Article XVI, Section 2);

AAPL Code of Ethics

- D. Performance of professional services in a competent manner (Article XVI, Section 2)
- E. Adherence to any provisions of the Bylaws, Code of Ethics, or any rule, regulation, or order adopted pursuant thereto (Article V, Section 9);
- F. Avoiding the aiding or abetting of any unauthorized use of the title “Certified Professional Landman”, “Registered Land Professional”, “P Land”, or “CPL/ESA” (Article V, Section 9); and
- G. Avoiding any act or conduct, which causes disrespect for or lack of confidence in the member to act professionally as a land professional (Article V, Section 9).

AAPL Standard of Practice

1. In justice to those who place their interests in his care, a land professional *shall be informed regarding laws, proposed legislation, governmental regulations, public policies, and current market conditions in his area of represented expertise*, in order to be in a position to advise his employer or client properly (D, E).
2. It is the duty of the land professional to *protect the members of the public with whom he deals against fraud, misrepresentation, and unethical practices*. He shall eliminate any practices which could be damaging to the public or bring discredit to the petroleum, mining or environmental industries.



AAPL Standard of Practice

3. In accepting employment, the land professional *pledges himself to protect and promote the interests of his employer or client*. This obligation of absolute fidelity to the employer's or client's interest is primary but it does not relieve the land professional of his obligation to *treat fairly all parties to any transaction*, or act in an ethical manner (A, B).
4. The land professional *shall not accept compensation from more than one principal for providing the same service*, nor accept compensation from more than one party to a transaction, without the full knowledge of all principals or parties to the transaction (B, C).
5. The land professional *shall not deny equal professional services to any person for reasons of race, creed, sex or country of national origin*. The land professional shall not be a party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, sex or country of national origin (A, F).

AAPL Standard of Practice

6. A land professional *shall provide a level of competent service in keeping with the standards of practice* in those fields in which a land professional customarily engages. The land professional *shall not represent himself to be skilled in nor shall he engage in professional areas in which he is not qualified* such as the practice of law, geology, engineering or other disciplines (D).
7. The land professional *shall not undertake to provide professional services concerning a property or a transaction where he has a present or contemplated interest*, unless such interest is specifically disclosed to all affected parties (C).

AAPL Standard of Practice

8. The land professional *shall not acquire for himself or others an interest in property which he is called upon to purchase for his principal*, employer or client without the consent of said principal, employer or client. He shall disclose his interest in the area which might be in conflict with his principal, employer or client. In leasing any property or negotiating for the sale of any block of leases, including lands owned by himself or in which he has any interest, a land professional shall reveal the facts of his ownership or interest to the potential buyer (C).
9. If a *land professional is charged with unethical practice* or is asked to present evidence in any disciplinary proceeding or investigation, or has direct knowledge of apparent unethical misconduct of another member, he shall place all pertinent facts before the proper authority of the American Association of Professional Landmen (E).

AAPL Standard of Practice

10. The land professional *shall not accept any commission, rebate, interest, overriding royalty* or other profit on transactions made for an employer or client *without the employer's or client's knowledge* and consent (B).
11. The land professional *shall assure that monies coming into his possession* in trust for other persons, such as escrows, advances for expenses, fee advances, and other like items, *are properly accounted for* and administered in a manner approved by his employer or client (B).
12. The land professional *shall avoid business activity which may conflict with the interest of his employer or client* or result in the unauthorized disclosure or misuse of confidential information (C).

AAPL Standard of Practice

13. The land professional *shall at all times present an accurate representation* in his advertising and disclosures to the public (A).
14. The land professional *shall not* aid or abet the *unauthorized use of the title* “Certified Professional Landman (*CPL*),” “Registered Professional Landman (*RPL*),” “Registered Landman (*RL*),” “*P.Land*”(Canadian designation) and “*CPL/ESA*.”
15. The land professional *shall not participate in conduct which causes him to be convicted, adjudged or otherwise recorded as guilty* by any court of competent jurisdiction of any felony, any offense involving fraud as an essential element, or any other serious crime.

Treat others as you want and expect to be treated.



Antitrust Concerns



Antitrust Statutes

- ▶ § 1 Sherman Act, 15 U.S.C. § 1

Trusts, etc., in restraint of trade illegal; penalty

- ▶ Section 1 of the Sherman Act of 1890, as amended June 2004, generally provides that every contract, combination in the form of trust or otherwise, or conspiracy, in **restraint of trade or commerce** among the several States, or with foreign nations, is declared to be illegal... and that every person who shall make any such contract or engage in any such combination or conspiracy declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding ten years, or by both said punishments, in the discretion of the court.

- ▶ § 2 Sherman Act, 15 U.S.C. § 2

- ▶ Monopolizing trade a felony; penalty

- ▶ Section 2 of the Sherman Act of 1890, as amended June 2004, generally provides that every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed **guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding ten years, or by both said punishments, in the discretion of the court.**

- ▶ Clayton Act

- ▶ The Clayton act provides for **treble civil damages** to civil action plaintiff for violation of Sherman Act.

Agreements that Restrain Trade

- Price-Fixing/Bid-Rigging Agreements
- Agreements to Allocate Markets, Customers, Territories or Products
- Group Boycotts/Collective Refusal to Deal
- Control Production Agreements
- Tying Agreements



Areas of Potential Antitrust Concern

- Joint Venture Operations / Joint Bidding / Area of Mutual Agreements (AMIs)
- Industry Trade Association Activities
- Informal Competitor Discussions and Groups



Areas of Potential Antitrust Concern

Joint Venture Operations

The term “joint ventures” is used to describe numerous cooperative business activities among competitors. In view of the inherent sensitivity of cooperative business activities among competitors, each proposal for such an arrangement must be reviewed by your management and legal counsel except those covered by prior advice, for example unitizations. Such cooperative activities include not only specific business ventures but also any proposal to exchange data with competitors.

Areas of Potential Antitrust Concern



Joint Bidding Agreements

- The Joint Bidding Agreement sets forth the pro-competitive purpose of the participants. This establishes the legitimacy of the union as one which satisfied the Rule of Reason test, based upon true functional integration, as opposed to a bald attempt to reduce the ultimate joint bid price.
- The Joint Bidding Agreement also allows participants to bid separately at the bid sale so that there is no attempt to chill the bidding
- Parties bidding separately can be required to share the purchased property with other parties to the Joint Bidding Agreement, pursuant to a valid area of mutual interest Agreement.

Areas of Potential Antitrust Concern

The Joint Bid Meeting

- The mechanics of the Joint Bid meeting operate to establish a maximum bid at which all participating parties are comfortable joining in the bid, as opposed to the lowest bid at which the group thinks they can acquire the property.
- After the proposal of a minimum bid participating parties propose increments in sequential turn, but care is taken not to send inappropriate signals to participants that one party believes that a maximum bid is at hand.

Example 3



Areas of Potential Antitrust Concern

The Area of Mutual Interest

The Area of Mutual Interest Agreement allows parties to legitimately protect each others rights to share in the later acquisition of property among parties who have jointly invested effort or other resources in the study or pursuit of the property. Care must be taken to recite the true functional integration which exists among the parties, as this differentiates a valid pro-competitive joint interest pursuit from a naked attempt to reduce competition for the properties.

Areas of Potential Antitrust Concern

Industry Trade Associations

Industry trade associations, including professional societies, have valuable and lawful functions. These include lobbying, collection and dissemination of certain data and the establishment of technical standards. Since their organizations often bring together competitors, the activities of the association must be strictly limited to its lawful purposes. They must not become the occasion, whether in formal meetings or other conversations, for discussions of prices or other unlawful antitrust conduct.



Areas of Potential Antitrust Concern

Informal Competitor Discussions

- Informal discussion can inadvertently lead to discussions in competitively sensitive areas.
- The appearance of competitors meeting informally can lead to a presumption that anti-competitive exchanges or discussions between competitors are occurring or such activities will follow.
- It is preferable not to participate in such informal competitor meetings; if participation is deemed necessary and appropriate from a business perspective, safeguards should be followed.

Areas of Potential Antitrust Concern

Informal Competitor Groups

- The informal competitor group should have a charter or by-laws that provides clear objectives and areas of permissible interests and discussions. This is the what, who, when, where, and why for the group.
- The governing document also should include an affirmative statement of commitment to antitrust compliance and the statement should be reviewed at each meeting. In addition, when the group meets, meeting guidelines similar to those used by industry trade associations also should be followed.

Areas of Potential Antitrust Concern

Competitor Meeting Guidelines

- Do prepare an agenda and have legal counsel review it before the meeting.
- Do follow your agenda; table any other topics.
- Do keep accurate minutes; have legal counsel review before finalized and circulated.
- Do invite legal counsel to attend if the meeting involves competitive matters outside a joint venture or supplier–customer relationship.
- *Do NOT* discuss competitively sensitive subjects.

Added Areas of Potential Antitrust Concern

United States Antitrust Enforcement

- Criminal Penalties...felony with prison sentences and corporate and individual fines.
- Civil Remedies...treble damages, successful plaintiff gets attorneys fees and costs, and injunctive relief.
- Cost of Litigation...disruption to business, significant personnel time and expense.



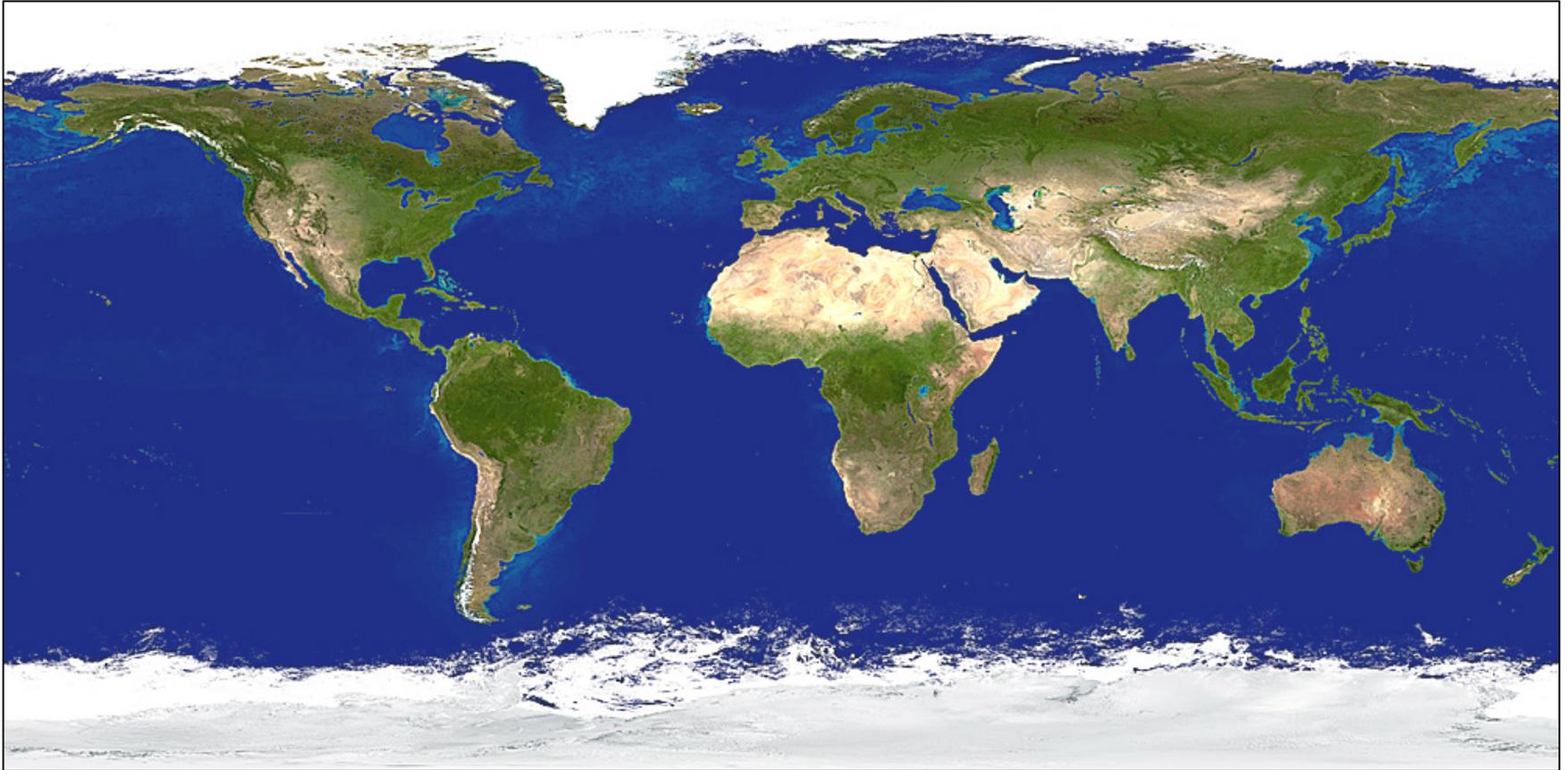
Areas of Potential Antitrust Concern

Other Antitrust Burdens

- Significant time required of the company's management, employees and lawyers.
- Disruptions caused in day-to-day conduct of the company's business.
- Adverse public relations for the company.

As for any legal compliance subject, when in doubt as to how you should act, consult your attorney.

Foreign Corrupt Practices Act (FCPA)



FCPA

The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.



Source: Dept. of Justice

FCPA

Specifically, the anti-bribery provisions of the FCPA prohibit the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of *any offer, payment, promise to pay, or authorization of the payment of money or anything of value to 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 a foreign official to influence the foreign official in his or her official capacity*, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

FCPA

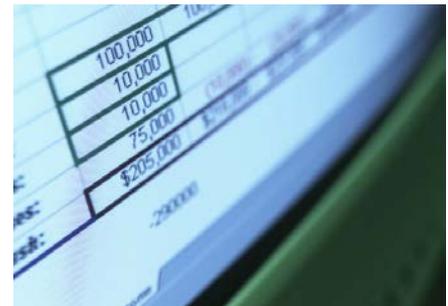
Since 1977, the anti-bribery provisions of the FCPA have applied to all U.S. persons and certain foreign issuers of securities. *With the enactment of certain amendments in 1998, the anti-bribery provisions of the FCPA now also apply to foreign firms* and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place *within the territory of the United States.*



Source: Dept. of Justice

FCPA

The *FCPA* also requires companies whose securities are listed in the United States to meet *its accounting provisions*. See 15 U.S.C. § 78m. These accounting provisions, which were designed to operate in tandem with the anti-bribery provisions of the FCPA, require corporations covered by the provisions to *(a) make and keep books and records that accurately and fairly reflect the transactions of the corporation and (b) devise and maintain an adequate system of internal accounting controls.*



Source: Dept. of Justice

How does FCPA impact you?

- ▶ Payments of any kind to a government official
- ▶ Payments can take many forms:
 - Cash
 - Tickets to Events
 - Merchandise
 - Sponsorships
 - Travel and related Expenses
 - Company Memorabilia
 - Etc.....



Example 4

National Oil Companies

A government official includes any U.S. employees of a National Oil Company working in its home county, in the United States, or at a domestic affiliate.

Abu Dhabi National Oil Company	Kuwait Petroleum Corporation	Petroleum Development Oman
China National Offshore Oil Company (CNOOC)	National Iranian Oil Company (NIOC)	Petronas – Malaysia
China National Petroleum Corporation (PetroChina)(CNPC)	Nigerian National Petroleum Company	Qatar Petroleum
Egyptian General Petroleum Corporation	National Oil Corporation – Libya	Rosneft – Russia
Emirates National Oil Company – Dubai	National Oil Corporation of Kenya	Saudi Arabian Oil Company (Aramco)
Empresa Colombiana de Petr�leos S.A. – Colombia	Oil and Natural Gas Corporation – India	Sinopec – China
Empresa Estatal Petr�leos del Ecuador (PetroEcuador)	Pertamina – Indonesia	Sonangol – Angola
Gazprom – Russia	Petrobras – Brazil	Sonatrach – Algeria
GEPetrol – Equitorial Guinea	Petr�leos de Peru	Statoil – Norway
Iraq National Oil Company	Petr�leos de Venezuela	Uzbekneftgaz – Uzbekistan
KazMunayGas – Kazakhstan	Petr�leos Mexicanos (PEMEX)	Vietnam National Oil and Gas Group (Petro Vietnam)

FCPA Recommendation

- ❑ Check with your Legal staff to determine if and when FCPA might apply to your offshore business dealings.
- ❑ Not every company interprets the law the same way.
- ❑ If you don't ask, you won't know.
- ❑ Don't be surprised



Questions ??????

