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James M. Phillippi

Charles K. Houser

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Baksheesh and Wong Wogok: An American Business Guide to the Foreign Corrupt Practices Act and the Anti-Bribery Laws of Certain OPEC Nations**

I. INTRODUCTION

On March 4, 1981, the United States Government Accounting Office released a study¹ on the impact of the Foreign Corrupt Practices Act² (FCPA) on the American position in world trade. The study concluded that the FCPA has made it difficult for American companies to obtain lucrative foreign contracts.³ The Government Accounting Office also analyzed the anti-bribery laws of other nations and found that for purposes of regulating trade abroad "no other nation has antibribery prohibitions similar to the Act."⁴

This article focuses on the FCPA and its interrelation with the anti-bribery laws of three nations: Saudi Arabia, Qatar, and Indonesia. These nations were selected because they rely heavily on extraordinary payments in awarding government contracts.⁵

Numerous law review articles have discussed the goals, morality, and limitations of the Foreign Corrupt Practices Act.⁶ We do

* These two words are terms for bribery in the Middle East and Indonesia, respectively.

** Saudi Arabia, Qatar, and Indonesia.

1. COMPTROLLER GENERAL OF THE UNITED STATES, GENERAL ACCOUNTING OFFICE, IMPACT OF FOREIGN CORRUPT PRACTICES ACT ON U.S. BUSINESS [1981 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 82,841 [hereinafter cited as GAO].

2. The Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78a, 78m(b)(2), 78dd-1 to 78ff (Supp. II 1978) [hereinafter cited as FCPA].

3. See GAO, *supra* note 1, at ¶ 84,113. This study found that 30% of the corporations responding to the GAO survey and which engaged in foreign business reported that they had lost business as a result of the FCPA. In addition, over 60% reported that American companies were at a disadvantage against foreign competitors because of American anti-bribery laws. See also TIME, March 16, 1981, at 58.

4. COMPTROLLER GENERAL, REPORT TO THE CONGRESS: IMPACT OF FOREIGN CORRUPT PRACTICES ACT ON U.S. BUSINESS 45 (Comm. Print 1981) [hereinafter cited as COMPTROLLER GENERAL].

5. N. JACOBY, P. NEHENKIS & K. EELLS, BRIBERY AND EXTORTION IN WORLD BUSINESS 4-22 (1977) [hereinafter cited as JACOBY].

6. See generally, Dundas & George, *Historical Analysis of the Accounting Standards of*

not seek to duplicate their efforts. Rather, the focus of this article is on known loopholes in the FCPA and their correlation to the laws of these three OPEC countries.

Since most authors writing about the FCPA have discussed the Act from a moral standpoint (in line with stated Congressional intent⁷), few materials are available which take a clear-cut approach to minimal compliance with the Act. Likewise, there are few articles in the English language detailing the anti-bribery regulations of any of the OPEC countries. For these reasons, our method of research consisted of surveying prominent authorities on business practices and regulations in Saudi Arabia, Qatar, and Indonesia. In the course of this survey, the authors of this article contacted American embassies abroad, prominent law firms in the selected countries, Chambers of Commerce of OPEC nations, and over 100 American (Forbes and Fortune 500 listed⁸) companies doing business in the selected countries.

II. THE FOREIGN CORRUPT PRACTICES ACT

The FCPA imposes three basic requirements on American corporations doing business abroad: (1) Creation of certain accounting and reporting standards for domestic corporations;⁹ (2) prohibition of certain payments by publicly held corporations;¹⁰ and (3) prohibition of certain payments by other non-SEC regulated entities and individuals.¹¹

the Foreign Corrupt Practices Act, 10 MEM. ST. U.L. REV. 499 (1980); Sprow & Benedict, *The Foreign Corrupt Practices Act of 1977: Some Practical and Suggested Procedures*, 1 CORP. L. REV. 357 (1978) [hereinafter cited as Sprow & Benedict]; Surrey, *The Foreign Corrupt Practices Act: Let the Punishment Fit the Crime*, 20 HARV. INT'L L.J. 293 (1979); Note, *Accounting for Corporate Misconduct Abroad: The Foreign Corrupt Practices Act of 1977*, 12 CORNELL INT'L L.J. 293 (1979); Smallwood, *Multinational Enterprises and Problems of Doing Business Abroad*, 4 INT'L TRADE L.J. 351 (1979) [hereinafter cited as Smallwood]; Note, *Effective Enforcement of the Foreign Corrupt Practices Act*, 32 STAN. L. REV. 561 (1980); *Corruption and the Foreign Corrupt Practices Act of 1977*, 13 U. MICH. J.L. REF. 158 (1979); Note, *In Search of an International Solution to Bribery: Impact of the Foreign Corrupt Practices Act of 1977 on Corporate Behavior*, 12 VAND. J. TRANSNAT'L L. 59 (1979).

7. HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE, UNLAWFUL CORPORATE PAYMENTS ACT OF 1977, H.R. REP. NO. 640, 95th Cong., 1st Sess. 5, reprinted in [1977] U.S. CODE CONG. & AD. NEWS 4098; SENATE COMM. ON BANKING, HOUSING AND URBAN AFFAIRS, FOREIGN CORRUPT PRACTICES ACT OF 1977, S. REP. NO. 114, 95th Cong., 1st Sess. 4-5, reprinted in [1977] U.S. CODE CONG. & AD. NEWS 4098.

8. Both manufacturing and service businesses were sampled.

9. 15 U.S.C. § 78m(b)(2) (Supp. II 1978).

10. 15 U.S.C. § 78dd-1 (Supp. II 1978).

11. 15 U.S.C. § 78dd-2 (Supp. II 1978).

Although the accounting requirements of the Act impose a heavy financial burden on American corporations,¹² these provisions alone are not regularly enforced by the Securities and Exchange Commission.¹³ In a recent statement regarding enforcement of the Act, former SEC Chairman Harold Williams clearly explained: "[T]he Commission has not sought out violations of the accounting provisions for their own sake; indeed, we have not chosen to bring a single case under these provisions that did not also involve other violations of the law."¹⁴ Accordingly, this article will not address these accounting provisions.

A recent issue of the *Corporation Law Review*¹⁵ set forth the elements of a violation of the Act:

(1) the use of the mails or any means or instrumentality of interstate commerce, (2) corruptly in furtherance of (3) an offer, payment, promise to pay, or authorization of the payment of anything of value (4) to any foreign political party or official or candidate thereof, or any intermediary while knowing or having reason to know that any portion of such payment will be offered, given or promised to such foreign person (5) for the purposes of inducing such foreign person to do any act or make any decision in his official capacity or use his influence with any foreign government to effect or influence any act or decision of such government or instrumentality (6) in order to assist such issuer or domestic concern in obtaining or retaining business for or with any person.¹⁶

Punishment for violation of the Act can be quite severe, since any violator (including an officer, director, or stockholder¹⁷) is subject to imprisonment for up to five years and a fine of up to \$10,000.¹⁸ Corporations are also subject to fines up to \$1,000,000 for each violation of the Act.¹⁹

The responsibility for enforcement of the FCPA is shared by

12. COMPTROLLER GENERAL, *supra* note 4, at 13. Of the corporations responding to the GAO survey, 50% believed the burden had increased their accounting and auditing costs by 35%; 22% reported that the burden had increased their accounting and auditing costs by more than 35%; and 28% estimated the cost burden at less than 11%.

13. 21 S.E.C. Docket 1466, [1981 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 82,811.

14. *Id.* at 1467, [1981 Transfer Binder] FED. SEC. L. REP. (CCH) at ¶ 83,934.

15. Sprow & Benedict, *supra* note 6, at 357.

16. *Id.* at 358 (footnote omitted).

17. 15 U.S.C. § 78ff(c)(2) (Supp. II 1978).

18. *Id.*

19. 15 U.S.C. § 78ff(c)(1) (Supp. II 1978).

the SEC and the Justice Department.²⁰ The SEC is charged generally with enforcing the Act against publicly traded corporations.²¹ The Justice Department has power to enforce the Act against any violator²² and has sole jurisdiction to prosecute non-corporate defendants.²³

In March 1980, the United States Department of Justice publicly announced implementation of its advisory "Foreign Corrupt Practices Act Review Procedure."²⁴ With this announcement, the Department of Justice agreed that it would review questionable payments proposed by American individuals and entities before the payments were made. If the Department rendered a favorable opinion of the payment, the Department would not prosecute.²⁵

While the SEC declined to participate in the program, the Commission agreed not to take any action against those whose behavior had been approved by the Justice Department prior to May 1, 1981.²⁶

Although very specific information must be provided to the Department in the application for Departmental review,²⁷ approval of the application is expressly not commensurate with immunity from prosecution.²⁸ In effect, this asks a potential criminal defendant to assist in the investigation.²⁹

20. See 466 SEC. REG. & L. REP. (BNA) A-3 (1978). See also 15 U.S.C. § 78dd-2(c) (Supp. II 1978) (concerning the role of the Justice Department in enforcing the FCPA).

21. 466 SEC. REG. & L. REP. (BNA) A-3 (1978).

22. 15 U.S.C. § 78dd-2(c) (Supp. II 1978).

23. 466 SEC. REG. & L. REP. (BNA) A-3 (1978).

24. Criminal Division Review Under the Foreign Corrupt Practices Act of 1977, 28 C.F.R. § 50.18 (1980) [hereinafter cited as Criminal Division Review].

25. *Id.* at § 50.18(k).

26. 20 S.E.C. Docket 1259, FED. SEC. L. REP. (CCH) ¶ 26,628.

27. Pursuant to the Criminal Division Review, *supra* note 24, the application for Departmental review must be as follows:

- a) In writing;
- b) Must be an actual, not hypothetical, transaction;
- c) Must be submitted by a party to the transaction;
- d) Must be specific and contain in detail all relevant material information bearing on the conduct for which review is requested and must be signed on behalf of each requesting party by an appropriate senior officer with operational responsibility for the conduct;
- e) The Criminal Division of the Justice Department must be provided with any additional information or documents the Division requests.

28. Pursuant to section (d) of the Criminal Division Review, *supra* note 24, the Justice Department may refuse to consider a review request.

29. As of January 1981, only five entities have participated. See GAO, *supra* note 1.

III. LOOPHOLES IN THE ACT

With any new legislation, certain ambiguities and differing constructions arise after enactment. The SEC admits that the FCPA contains such ambiguities.³⁰

A. *Payments for Ministerial Acts*

The FCPA specifically excludes from regulation payments to foreign government officials whose acts are essentially ministerial.³¹ This exemption allows American-regulated entities to make certain "grease" payments to facilitate duties to which the payor would ordinarily be entitled.³² However, payment to a person with bureaucratic duties to act in a discretionary capacity is illegal, even if the action paid for requires only a minimal amount of independent decision-making.³³

B. *Payments to Government Officials in Private Capacity*

For payments to be outlawed by the Act, they must be made "in order to assist [the payor] . . . in obtaining or retaining business for or with, or directing business to, any person."³⁴ While this presents an apparent loophole, a substantial payment to a foreign official outside his or her official capacity is inherently suspect.³⁵

C. *Non-Corrupt Payments*

An obvious enforcement problem for the SEC or Justice Department is the specific intent requirement that foreign payments be made "corruptly."³⁶ Although this is not a loophole per se, it definitely narrows the scope of the Act and provides a potential defense

30. 21 S.E.C. Docket 1467, [1981 Transfer Binder] FED. SEC. L. REP. at ¶ 83,933.

31. 15 U.S.C. § 78dd-2(d)(2) (Supp. II 1978).

32. H.R. REP. NO. 640, 95th Cong., 1st Sess., *supra* note 7, at 8, *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS at 4121.

33. *Id.*

34. 15 U.S.C. § 78dd-1(a) (Supp. II 1978).

35. Sprow & Benedict postulate that a company should not be in violation of the FCPA for renting office space from a foreign official operating in a private capacity. However, they feel that such transactions should be avoided should the rent payments have a "potential influence upon the decisional process of his government affecting the payor's business." Sprow & Benedict, *supra* note 6, at 359.

36. 15 U.S.C. § 78dd-1(a) (Supp. II 1978). A "corrupt act" has been defined as one "done voluntarily and intentionally, and with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means." *United States v. Strand*, 574 F.2d 993, 996 (9th Cir. 1978).

to the payor.³⁷

D. Extorted Payments

The FCPA is silent as to the legality of payments made pursuant to a demand from a foreign official. The Senate Banking, Housing and Urban Affairs Committee considered the distinction between bribery and extortion payments at the time the Act was drafted.³⁸ Concluding that an American company commits an illegal act of bribery only when it can "make a conscious decision whether or not to pay. . .," the Committee declared that "money paid to enter a foreign market or gain a contract would be an illegal bribe whereas money paid to prevent the loss of foreign property would be extortion."³⁹ The Committee's statement leaves substantial ground for speculation as to what constitutes a bribe and what constitutes an extortion payment.⁴⁰

E. Acting Through Foreign Subsidiaries and Agents

The FCPA prohibits corrupt payments made by publicly traded corporations, their officers and employees, and "other domestic concerns."⁴¹ The bill introduced in the House of Representatives originally defined "domestic concern" in section 104 as "any corporation . . . controlled by individuals who are citizens or nationals of the United States."⁴² The final draft, however, omitted U.S.-controlled foreign subsidiaries in the definition of "domestic concern."⁴³ As a result, SEC Chairman Harold Williams voiced his opinion on when certain foreign subsidiaries would become subject to the provisions of the Act:

Where the issuer controls more than 50 percent of the voting securities of the subsidiary, compliance is expected. So, too, would it be expected if there is between 20 percent and 50 percent own-

37. A payor might feel ill at ease after making a million dollar payment and relying on the defense that it was made in an "upright and pure manner."

38. S. REP. NO. 114, 95th Cong., 1st Sess., *supra* note 7, at 10-11, *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS at 4109.

39. *Id.*

40. Whether an across-the-board demand to enter a marketplace constitutes a bribe or extortion is a question which remains unanswered. Where all new business transactions in a country require payment to an official, the distinction between bribe and extortion disappears.

41. 15 U.S.C. § 78dd-2(a) (Supp. II 1978).

42. H.R. Doc. No. 3815, 95th Cong., 1st Sess. (1977).

43. 15 U.S.C. § 78dd-2(d)(1) (Supp. II 1978).

ership, subject to some demonstration by the issuer that it does not amount to control. If there is less than 20 percent ownership, we [the SEC] will shoulder the burden of affirmatively demonstrating control.⁴⁴

One commentator concluded that "[i]f such an intermediary firm were foreign, staffed by foreigners or staffed on behalf of a foreign subsidiary, it may well stand outside the entire scope of the Act, especially if no nexus with American interstate commerce and American firms can be proven."⁴⁵

F. The "Reason to Know" Requirement

The FCPA provides penalties for questionable foreign payments only when the parent corporation or one of its officers "has reason to know" that a subsidiary or foreign agent made such a payment.⁴⁶ The phrase "reason to know" is not defined in the Act. However, ex-Secretary of the Treasury Michael Blumenthal stated during House hearings on the FCPA that a twenty percent commission paid through or to a foreign agent would be suspect if industry custom allowed a five percent commission.⁴⁷ As with the question of "bribe" versus "extortion," this is another area of uncertainty in the Act.

G. Entertainment Expenses

One type of payment clearly prohibited by the Act is the payment made for entertaining foreign officials.⁴⁸ By the letter of the Act, even minuscule entertainment expenses, gifts, or "anything of value" given to influence the discretion of a foreign official is clearly prohibited.⁴⁹ However, these provisions of the Act should not be enforced because the purpose of the Act⁵⁰ should not be to prohibit behavior in foreign countries which is permitted at home.⁵¹

44. 21 S.E.C. Docket 1471, [1981 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 83,938.

45. Smallwood, *supra* note 6, at 355.

46. 15 U.S.C. 78dd(1) (Supp. II 1978).

47. *Hearings on H.R. 3815 & 1602 Before the Subcomm. on Consumer Protection and Finance of the House Comm. on Interstate and Foreign Commerce*, 95th Cong., 1st Sess. 194 (1977) [hereinafter cited as *Hearings*].

48. 15 U.S.C. §§ 77dd-1(a), 78dd-2(a) (Supp. II 1978).

49. *Id.*

50. *Hearings*, *supra* note 47, at 51.

51. I.R.C. § 274 (1982).

IV. ANTI-BRIBERY LAWS OF CERTAIN COUNTRIES

American companies not only have to comply with the Foreign Corrupt Practices Act, but also applicable anti-bribery laws in the countries in which they are doing business. This section will discuss by country the laws of the selected member nations of OPEC.

A. Saudi Arabia

Baksheesh, the under-the-table payment, is an essential element of Saudi Arabian business.⁵² One current news source estimates that the price of contracts with the Saudi government is increased from three to fifteen percent, depending upon the amount of *baksheesh* paid in the course of the transaction.⁵³

In contradiction to the reported payments system, Saudi Arabia has the most comprehensive collection of anti-bribery statutes of the selected OPEC countries. Under Saudi Arabia's Royal Decree Number 15,⁵⁴ acceptance by any public servant of any monetary contribution given to expedite sales constitutes a crime punishable by one to five years in prison and a fine of from 5,000 Saudi Riyals (SR) to 100,000 SR.⁵⁵ This law applies whether the Saudi government official acts or abstains from doing any act in exchange for such an illegal payment.⁵⁶ The same public servant is liable for soliciting such a payment whether or not the payment is ever made.⁵⁷

Any person making an offer of payment which is accepted is known as a "corruptor" and is exposed to the same penalties assessed against the Saudi official.⁵⁸

Any person offering a bribe which is not accepted is subject to incarceration from six to thirty months or a fine ranging from 2,500 SR to 50,000 SR.⁵⁹ Unlike the FCPA, Saudi law⁶⁰ clearly describes

52. JACOBY, *supra* note 5, at 7.

53. "To do business in Saudi Arabia it is essential to be connected, via an agent or middleman, to a member of the royal family which controls not just the government, but business as well." TIME, March 16, 1981, at 59. In 1980 alone, one government minister collected \$500 million in "commission fees" alone. *Id.*

54. Royal Decree Number 15, 7.3.1382H (1962) (Saudi Arabia).

55. *Id.* at art. I.

56. *Id.* at art. II.

57. *Id.* at art. III.

58. *Id.* at art. VI.

59. *Id.* at art. VII. Once payment is accepted, there is no distinction between bribery payments and payments made upon demand.

60. *Id.* at art. IX.

those persons considered public servants subject to the anti-bribery legislation: (1) Any permanent or temporary employee of any department of the government; (2) any arbitrator or expert nominated by the government or any official governmental committee; (3) any doctor or nurse responsible for issuance of public health certificates; and (4) any employee of any Saudi company working in the public services.

Saudi Arabia also has a comprehensive code system requiring foreign companies to utilize Saudi agents in the course of their business transactions.

In 1962, the Saudi Government also enacted Royal Decree M/11,⁶¹ which provides that all goods sold in Saudi Arabia are to be sold by a Saudi citizen or a Saudi agent registered with the Ministry of Trade and Industry.⁶²

In 1975, the government expanded the 1962 Act by prohibiting payment of a commission to any intermediary in an arms sale to the Saudi Government.⁶³ Such prohibitions can be avoided through complicated partnership arrangements.⁶⁴ It should be noted that Article 10 of the 1978 Decree⁶⁵ states that "[t]he object of any agency (including partnerships) may not be the exploitation of influence or mediation."⁶⁶

Violation of the agency requirements is punishable by prohibition of the corporation's future activities in Saudi Arabia, and, as to the Saudi agent, the withdrawal of his or her registration and the prohibition of his or her acting as an agent in Saudi Arabia.⁶⁷

The Saudi government is currently reviewing its agency and anti-bribery provisions in their entirety, which will likely lead to future modifications of the 1978 Decree.⁶⁸

61. Royal Decree M/11 (1962), *as amended by* Royal Decree M/8 (1973) (Saudi Arabia).

62. For a comprehensive discussion of these agency requirements, *see* MIDDLE EAST EXECUTIVE REPORTS, Oct. 1979, at 3 and Dec. 1980, at 7; N.A. SCHILLING, *DOING BUSINESS IN SAUDI ARABIA AND THE ARAB GULF STATES* 56-57 (1979).

63. Counsel of Ministers Decision Number 1275 (1975) (Saudi Arabia).

64. MIDDLE EAST EXECUTIVE REPORTS, *supra* note 62.

65. Royal Decree M/2 (1978) (Saudi Arabia).

66. *Id.*

67. MIDDLE EAST EXECUTIVE REPORTS, *supra* note 62.

68. *Id.*

B. Qatar

In 1971, the Qatari Criminal Code⁶⁹ was amended to include certain anti-bribery provisions. Under the section prohibiting bribery of government officials, any public employee who requests or accepts money for performing or abstaining from performing an act within the scope of his or her duties may be imprisoned for a period not to exceed seven years.⁷⁰ Furthermore, should any Qatari employee accept money after promising to undertake such an act, he or she is liable for such penalty whether or not he or she performs the act.⁷¹

Included in the Qatari definition of bribery is "any special benefit received by a public official from the sale of any property at a price above its value or from purchase at a price below its value in any related contract between the person giving and the person accepting the bribe."⁷²

Any person offering a public employee a bribe which is accepted is subject to the same seven-year period of imprisonment.⁷³ Any person who unsuccessfully attempts to give a bribe to a public official may be punished by a fine not exceeding 1,000 Qatari Riyals.⁷⁴ Any person acting as an intermediary between a person offering a bribe and a person accepting a bribe may notify the public authorities of Qatar and be exempt from punishment.⁷⁵

In 1964, the Qatari Government adopted an agency law⁷⁶ providing that no foreign entity may carry on commercial activity within Qatar except through a registered Qatari agent or as a minority participant in a Qatari entity. Companies importing products to Qatar for their own use⁷⁷ are exempt from this agency requirement.

In 1970, Qatar passed a law⁷⁸ requiring that all foreign firms under contract with the Qatari Government for performance of services within Qatar appoint a Qatari agent. There are no legal ceilings on commissions paid under government contracts.⁷⁹

69. Qatari Criminal Code Law Number 14 (1971).

70. *Id.* at art. 109.

71. *Id.*

72. *Id.*

73. *Id.* at art. 110.

74. *Id.* at art. 111.

75. *Id.* at art. 110.

76. Qatari Commercial Agencies Law Number 12 (1964).

77. *Id.* Presumably these are oil companies importing drilling equipment.

78. Qatari Commercial Agencies Law Number 18 (1970).

79. MIDDLE EAST EXECUTIVE REPORTS, Dec. 1980, *supra* note 62, at 7.

Qatar, a small peninsula bordering Saudi Arabia, shares many of the customs and traditions of that country. Therefore, enforcement of these all-encompassing commercial codes is reported to be equally questionable.⁸⁰

G. Indonesia

Indonesia has a long-standing reputation for tacit approval of bribery in its commercial system.⁸¹ Notwithstanding this reputation, Indonesia has an equally long-standing and severe anti-bribery law.

Since 1915, Indonesia's Penal Code has contained provisions regulating receipt of incentive payments by Indonesian civil servants.⁸² Pursuant to this Code, any civil servant having reason to know that he or she has received a private payment for any act in the course and scope of his or her employment was subject to imprisonment not to exceed three years and six months or a fine not to exceed 300 Rupiah.⁸³ The punishment was increased to five years if the civil servant accepted such a payment with full knowledge of its intended purposes.⁸⁴

In 1971, Indonesian law was amended to provide punishment for persons attempting to bribe government officials.⁸⁵ Under the new law, any person giving a present to a government official in exchange for a discretionary act or promise by the official is subject to twenty years imprisonment and a fine of up to 10,000,000 Rupiah.⁸⁶ This 1971 Amendment imposed the same penalty against any government official who failed to report receipt of any of the aforementioned payments detailed in the 1915 Penal Code.⁸⁷

Any officer of the court, including attorneys, prosecutors, or judges, who accepts a bribe to influence a decision in a legal case is

80. A former oil minister of Qatar accepted a 1.5 million dollar bribe for oil exploration rights which were not renewed by a subsequent Qatari minister. *TIME*, March 16, 1981, at 59.

81. In Indonesia, "corruption is so family oriented that in the early 1970's, President Suharto's wife, Tien, was known as 'Mrs. Tien Percent.'" *Id.* at 67. Reports also indicate that one "drab Indonesian government employee who never made more than \$9000 per year in salary in his life [left] relatives fighting over his estate . . . of nearly \$35 million." *Id.*

82. Indonesian Penal Code arts. 418-20 (1915).

83. *Id.* at art. 418.

84. *Id.* at art. 419.

85. Law Number 3, ¶ 1 (1971).

86. *Id.* at ¶ 1(d).

87. *Id.* at ¶ 1(e).

subject to imprisonment of up to nine years.⁸⁸ Should such an officer of the court accept a bribe in a criminal case, such person is subject to imprisonment of up to twelve years.⁸⁹

The Indonesian Penal Code further contains a catchall phrase outlining "dishonest competition" as follows:

He who, in order to establish, maintain or expand his or another's business, commits a fraudulent act to deceive the public or a definite person shall, if as a consequence thereof disadvantages arise for his or the other's competitors, being guilty of dishonest competition, be punished with imprisonment of the highest one year and four months or with a fine of at the highest 13,500 Rupiah.⁹⁰

V. CONCLUSION

After examination of the Foreign Corrupt Practices Act and the laws and customs of the selected OPEC nations, two questions remain unanswered:

1. Should the United States be the only major industrialized nation to regulate morality and restrict business practices abroad?
2. Should a country where bribery is a fact of life require the use of such payments in business dealings conducted in the United States?

James M. Phillippi
Charles K. Houser

88. Indonesian Penal Code art. 420(1) (1915).

89. *Id.* at art. 410(2).

90. *Id.* at art. 382.