

FCPA Compliance Contract Template

Speaking at the Seventh Annual IQPC Advanced Contracts Risks Management for Oil and Gas Conference, Don Butler, General Counsel, Seneca Resources discussed contract templates and the use of these documents in transactional work. The concepts which Mr. Butler discussed are applicable when drafting templates which include language related to Foreign Corrupt Practices Act (FCPA) contractual terms.

He began his presentation by noting that by use of the word ‘template’ he meant that it was a form of contract drafted by his company for use in certain transactions. It was designed to be more than just a starting point for negotiations. The template has several benefits for Seneca which, as he related, include: (1) the language is tested against real events; (2) the language assists the company in managing its risks; (3) the language fits into a series of related contracts; (4) the language is straight-forward to administer and (5) the language helps to manage the expectations of both contracting parties.

The contracting concepts are equally applicable to contracts which a company, subject to the FCPA or UK Bribery Act, would enter into with a foreign business partner such as an agent, distributor, reseller, joint venture partner or any other person or entity which might represent a US or UK business internationally. Such templates must have compliance obligations stated directly in the document, whether such document is a simple agency or consulting agreement or a joint venture with several formation documents. The FCPA compliance language should include representations that in all undertakings the foreign business partner will make no payments of money, or anything of value, nor will such be offered, promised or paid, directly or indirectly, to any foreign officials, political parties, party officials, candidates for public or political party office, to influence the acts of such officials, political parties, party officials, or candidates in their official capacity, to induce them to use their influence with a government to obtain or retain business or gain an improper advantage in connection with any business venture or contract in which the Company is a participant.

In addition to the above affirmative statements regarding conduct, a FCPA template contract should have the following compliance terms and conditions in a foreign business partner contract.

- Indemnification: Full indemnification for any FCPA violation, including all costs for the underlying investigation.
- Cooperation: Require full cooperation with any ethics and compliance investigation, specifically including the review of foreign business partner emails and bank accounts relating to your Company’s use of the foreign business partner.
- Material Breach of Contract: Any FCPA violation is made a material breach of contract, with no notice and opportunity to cure. Further such a finding will be the grounds for immediate cessation of all payments.
- No Sub-Vendors (without approval): The foreign business partner must agree that it will not hire an agent, subcontractor or consultant without the Company's prior written consent (to be based on adequate due diligence).

- **Audit Rights:** An additional key element of a contract between a US Company and a foreign business partner should include the retention of audit rights. These audit rights must exceed the simple audit rights associated with the financial relationship between the parties and must allow a full review of all FCPA related compliance procedures such as those for meeting with foreign governmental officials and compliance related training.
- **Acknowledgment:** The foreign business partner should specifically acknowledge the applicability of the FCPA to the business relationship as well as any country or regional anti-corruption or anti-bribery laws which apply to either the foreign business partner or business relationship.
- **On-going Training:** Require that the top management of the foreign business partner and all persons performing services on your behalf shall receive FCPA compliance training.
- **Annual Certification:** Require an annual certification stating that the foreign business partner has not engaged in any conduct that violates the FCPA or any applicable laws, nor is it aware of any such conduct.
- **Re-qualification:** Require the foreign business partner re-qualify as a business partner at a regular interval of no greater than every three years.

Traditional contracting techniques are a useful tool in the FCPA contracting area. By having such template language, a company can put forward the compliance terms and conditions which will not only communicate the foreign business partner's FCPA compliance obligations but also protect a business, to the highest degree possible, through risk shifting-clauses.

So what is in your FCPA contract template?

To see a video of Mr. Butler's presentation, [click here](#).

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