

To: Our Clients and Friends

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## **Can Bribery Be All That Mysterious**

The recent spate of Foreign Corrupt Practices Act (FCPA) convictions raises a basic question: What's so hard about the FCPA? Reports about the DOJ giving the FCPA an enforcement priority raise similar questions as well.

What is bribery? Is it really so difficult? Don't most of us see it, like Justice Stewart did, when he saw obscenity?

Bribery is quid pro quo, although those who know not Latin might Quale in their boots and think it occurs only in Latin America.

So why do companies run afoul? Some, of course, might not care or are willing to take the risk they won't be detected. The odds of detection, despite numerous high-profile cases, are statistically small.

Others, however, do care, but think representations from recipients of largesse provide cover: "I understand the law and everything that has ever been written on the subject and promise to obey."

Most, of course, do not understand and will promise anything to get the business as a simple cross-examination would reveal. And therein lies the problem. Promises and representations built on sand are no better than the foundations on which they rest.

There are better solutions.

Among them: Do to others what you would do unto lawyers and other service providers, heaven forbid: Make them tell you in advance what they are going to do.

And make them tell you what they have done when they send the bill.

And think before and after the fact: Can what they said they would do and what they said they have done be done without bribery?

How hard is that?

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