

An FCPA Exam - Selling Health Insurance in India

If you do not read the FCPA Professor on a daily basis, you should do so as he consistently posts about all things Foreign Corrupt Practices Act (FCPA), from the legal angle, far more often and better than any other of the FCPA commentaries. If you want to hone some legal FCPA points, you can do no better than to engage in some good Socratic dialogue with the Professor via email. I have often mused on how the Professor might obtain his final examination questions for his FCPA class exams. Given the ‘stranger than life’ real world FCPA matters that arise, almost weekly; it might be that he only needs to read the newspapers to get his questions.

So inspired by the FCPA Professor, I would like to have a FCPA exam for the readers of this blog. In this posting, I will set out the hypothetical question and in a subsequent post I will set out some proposed answers. As a law school professor once told me when I (meekly) sought an upward adjustment of my final grade, “Tom, there is no right or wrong answer to my exams, only incomplete ones and yours was not a complete answer.” With that in mind, there will be no right or wrong answers to the question I pose. Hopefully, the above disclaimer will keep me from failing my own exam. It also means that anyone who responds to all or part of the question raised below, will not receive a failing grade. I should also note that, all persons listed in this hypothetical are fictional.

You are the first Chief Compliance Officer (CCO) for a company which sells health insurance products to the consumer market. You were hired to get the company ready to go into the overseas market by setting up a FCPA compliance program. You have been on the job one month.

One lovely Monday morning, the Chief Executive Officer (CEO) calls you into his office and informs you of the following: his legal department has formed a joint venture in India, to sell health insurance policies, with an Indian company which specializes in making and selling cooking equipment to the Indian consumer market. At this point there is no value set for the joint venture but you may assume that it will be a multi-million dollar entity. As a show of good faith, the CEO has established the joint venture ownership, and Board of Directors, as a 50/50 partnership between both companies. The joint venture was formed in India and is governed by the laws of India.

The CEO has met several times with the CEO of the Indian joint venture partner, has looked him in the eye and knows he is a ‘straight shooter’ and someone he wants to do business with. To that end, the CEO of the Indian joint venture has assured him, due to his good relationship with various Indian governmental officials that he has met through his cooking equipment business, that he can get the joint venture through the byzantine Indian licensing process much quicker than some other person. He just needs the funding for the joint venture to come though as the licensing process cannot begin until the joint venture is formed.

The CEO envisions a sales force of employees, agents and other representatives of the joint venture, banks and other financial institutions which will receive commissions based upon the sales. He is excited because a large market for the products will be a trifecta of Indian public employees; federal, state, regional and local government employees. In other words, a captive market that the Indian partner will set up to tap into. Your CEO believes that each sales representative for the joint venture will need a separate license to sell health insurance for the products to be offered by the joint venture but the CEO of the joint venture partner has assured you gaining the license will not be a problem.

There is a signing ceremony scheduled to conclude the joint venture in two weeks and your CEO is making a final presentation to your company's Board of Directors next week. This will be the first Board meeting that you will attend and you will present to them your vision for FCPA compliance in the company going forward. Your CEO wants you to give your blessing to the Board of Directors for the joint venture at the Board meeting, from the compliance perspective.

Please discuss the FCPA issues that you can identify in the above hypothetical.

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