



MTS SYSTEMS CORPORATION



## Foreign Corrupt Practices Act (FCPA) *Role-Based Training for Sales and Service Employees*

# FCPA Sales & Service Training

## Training Agenda & Objectives



At the conclusion of this training, you will have a better understanding of:

- How your role specifically ties to FCPA compliance requirements
- Bribery and corruption requirements under the Foreign Corrupt Practices Act
- Bribery risks to be aware of and avoid in your day-to-day interactions and your business decisions
- U.S. company bribery and corruption violations
- How to ask questions and seek guidance
- How to report concerns

# FCPA Sales & Service Training

## Your Role in Sales & Service



- » You have a key role at MTS, driving sales and service with customers and growth opportunities for the business.
- » Given your daily interactions with stakeholders both internal and external to MTS, it is imperative that you are aware of and understand anti-bribery and anti-corruption compliance requirements.



You must be mindful of the bribery risks that exist in the course of your interactions with customers, business partners, and others throughout all phases of your work.

For example, there are specific requirements to be aware of when:

- ✓ Evaluating third parties on orders and contracts
- ✓ Providing & paying for hospitality for your customers and/or other business partners
- ✓ Paying for customers to travel to an MTS site for onsite training
- ✓ Determining if local purchases are needed to fulfill an order

### What is the Foreign Corrupt Practices Act?

- Many countries have anti-bribery and anti-corruption laws and regulations. In the U.S., bribery and corruption laws primarily fall under the FCPA.
- The FCPA prohibits MTS employees and anyone who conducts business on our behalf from offering, promising, authorizing, or paying corrupt payments (or providing anything of value) to a government official in order to obtain business or gain an undue business advantage.



**The result is a bribe, which is illegal.  
Bribes can come in many forms, not just cash payments.**

Under the FCPA (and MTS Policy), third parties are an extension of MTS and their actions performed on our behalf are the responsibility of MTS. As such, third parties should follow MTS's standards when conducting business on our behalf.

### What is the Foreign Corrupt Practices Act?

The FCPA also requires MTS to keep detailed and accurate books and records, as an important way to prevent misuse of company funds.

In particular, the FCPA requires a company to:

- 1 Maintain books and records at a reasonable level of detail to accurately reflect transaction activity of the business
- 2 Develop and maintain a system of internal accounting controls sufficient to ensure transactions are executed with the appropriate level of authorization.

The FCPA can penalize companies and individuals who cause inaccurate books and records or circumvent internal controls intentionally.

It is of the utmost importance that MTS create and approve records, payments, and expenditures that are accurate and complete, no matter the value, in accordance with applicable MTS policies and procedures.

### Who is a Government Official?

The FCPA (and MTS Policy) define government official broadly. It is not always easy to identify government officials. When in doubt, contact the Office of Risk and Compliance for assistance.

#### DEFINITION

- ✓ Any official or employee of any department, ministry, agency, instrumentality or enterprise that performs a government function.
- ✓ An employee of any entity that is wholly or partially government owned or controlled.
- ✓ An employee of an entity where government has minority stakes (even just 1% equity).
- ✓ Any political party, officer, employee or other person acting for or on behalf of a political party, or any candidate for public office.
- ✓ Any employee or person acting for or on behalf of a public international organization.
- ✓ Any officer, employee or person acting for a regional or local authority

#### EXAMPLES

- Customs agency official
- Party officials
- Judges
- Zoning officials
- Person hired to review bids on behalf of a government agency
- Member of the armed services
- Employee of a tax agency
- Immigration official
- Government employees handling government-related activities, such as licensing or permitting
- Employee working for an institution funded by a third party, such as a University, research center, etc.

# FCPA Sales & Service Training

*We All Play a Role in Compliance*



- » MTS has established a formal FCPA Corporate Compliance Program, overseen by the Office of Risk and Compliance, with daily activities and transactions executed by you as sales and service employees.
- » This program requires that certain activities and transactions meet FCPA compliance requirements.

ORC ensures the following elements are part of the overall program:



MTS FCPA Policies & Procedures cover compliance requirements for:

Business Partner Screening & Due Diligence	Hospitality involving government officials	Events and Sponsorships	Customer Travel	Facilitation Payments	Political & Charitable Contributions	Local Purchases	Conflicts of Interest
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The following slides include three example scenarios to provide further explanation of how bribes could exist or appear to exist in your daily interactions and decisions.



# FCPA Sales & Service Training

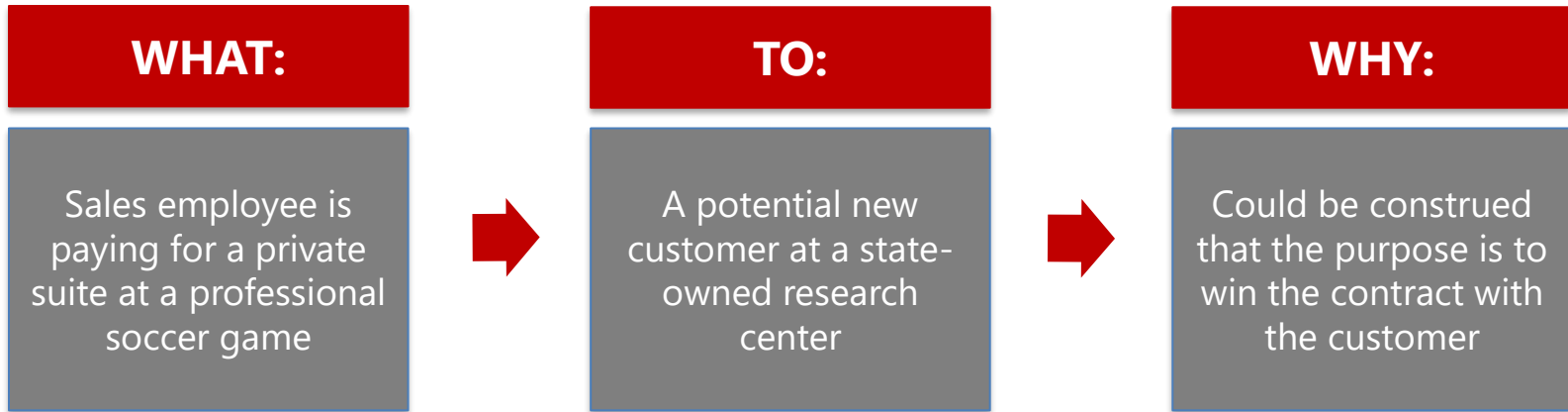
## *Scenario 1: Entertainment & Hospitality*



An MTS sales employee was introduced to a potential new customer in Brazil. This potential customer is a state-owned research center looking to purchase a 4-Poster and an Environment Test Chamber.

- The MTS sales employee has been in contact with the potential customer, meeting a few times for casual lunches.
- The potential customer suggests to the sales employee that they attend a soccer game in Rio de Janeiro in a private suite with meals included, at which time they can further negotiate and work towards closing the deal.
- The sales employee knows that this sale will get MTS to their sales goal for the quarter.
- The sales employee asks his supervisor if MTS can pay for the soccer game and related expenses, and the sales supervisor approves.
- The sales employee and potential Brazil customer attend the soccer game, enjoy the food, and finalize negotiations to sign a new contract to purchase the 4-Poster and Environment Test Chamber.
- The sales employee keeps all receipts from the event and attaches them to his expense report, which gets approved by his supervisor.

What issues in the scenario present bribery risk?



### Key Issues

- 1 Expenses would be considered excessive in nature.
- 2 Hospitality is:
  - ✓ being requested by the customer.
  - ✓ while sales negotiations are in process.

Because we have a deal in process and the customer is a state-owned entity (research center), any hospitality could be construed as influencing a business decision, which could be considered a bribe.

In addition, the excessive spend further supports the unreasonableness of this request.

### What are the related MTS policy requirements?

#### Key Issues

- 1 Expenses would be considered excessive in nature.
- 2 Hospitality is:
  - ✓ being requested by the customer.
  - ✓ while sales negotiations are in process.

#### MTS Policy Requirements

- ✓ There are annual thresholds for gift giving (or other business courtesies) to any receiving organization (*ORC-006 Policy*).
- ✓ Be aware that some interactions with government officials require approval from the Office of Risk and Compliance prior to occurring (for example, the exception of business lunches).

As sales and service employees, follow these policy requirements for hospitality expenses:

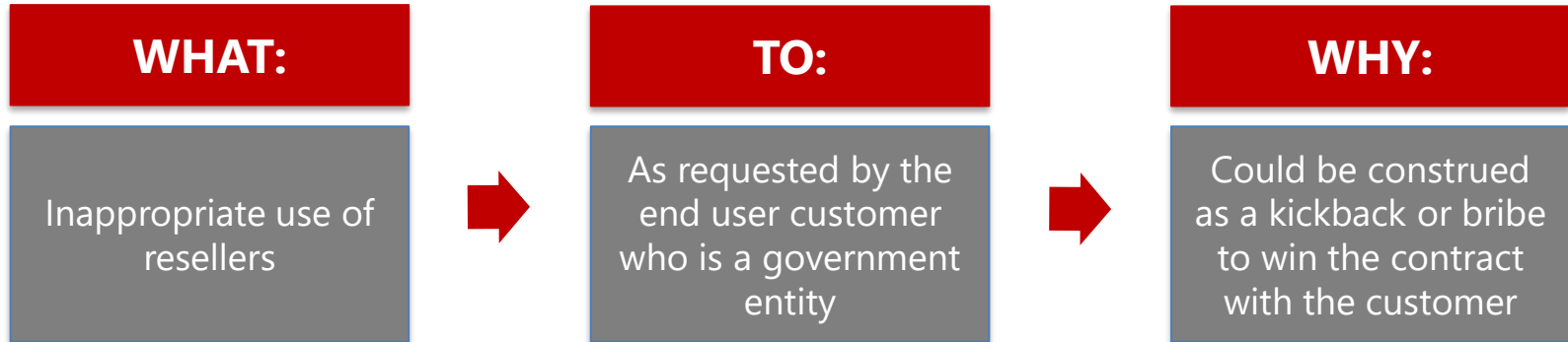
ORC-010 FCPA Compliance Policy

ORC-006 Gifts, Business Courtesies & Sponsorships Policy

An MTS Sales employee is negotiating with an end user customer in Korea who wants to purchase a rail test system from MTS. This end user customer is a foreign government entity.

- The end user customer has identified Reseller A in Korea that they want to use for the transaction.
- The customer explained to the Sales employee that Reseller A's role will be to provide excellent customs clearance services.
- The MTS Sales employee initiates screening for Reseller A in partnership with the Office of Risk and Compliance, since Reseller A has not been used on prior MTS transactions.
- Later, as the Order Administration team is entering the contract, they learn that Reseller A is only being used as a buying agent and not providing customs clearance services, as identified during reseller screening.
- The Order Administration team also learns that a different Third Party B has been added to the contract to provide customs clearance services in Korea.

What issues in the scenario present bribery risk?



### Key Issues

- 1 Including Reseller A in the contract without a valid or defined business purpose.
- 2 Including a different Third Party B, who has not been screened.

The original intention of involving Reseller A was to provide customs clearance services. Later, we see that Reseller A is the "buying agent" in the order, and a different Third Party B was added to fulfill custom clearance services.

Inappropriate use of resellers could be construed as being used for the purposes of bribery or kickbacks, and potentially violating FCPA regulation.

### What are the related MTS policy requirements?

#### Key Issues

- 1 Including Reseller A in the contract without a valid or defined business purpose.
- 2 Including a different Third Party B who has not been screened.

#### MTS Policy Requirements

- ✓ There needs to be a valid, legitimate business purpose for using a **new** or **existing** reseller (or any business partner) in a transaction.
- ✓ Resellers need to be used as originally intended for the transaction, and stated as such in the final contract.
- ✓ Resellers need to be screened prior to being added to a contract.

As Sales and Service employees, follow these policy requirements when working with resellers or other business partners:

ORC-010 FCPA Compliance Policy

ORC-010.03 Business Partner and Local Purchases Procedure

An MTS Sales employee in Germany is negotiating with an end user customer to purchase one HPU from MTS. This end user customer is a foreign government entity.

- The Sales employee works through the Technical Agreement with the end user customer, determining the requirements and needs for the one HPU.
- Through negotiations, the Sales employee agrees to include the following items in the contract, listed as local purchases:
  - Hydraulic Fluid
  - Hoses
  - 6 Apple MacBooks
- The hydraulic fluid, hoses, and 6 Apple MacBooks were delivered to the end user customer directly by the MTS Sales employee.
- Given the direct hand off of these items, the Sales employee and end user customer did not create any formal delivery documentation.

What issues in the scenario present bribery risk?



### Key Issues

- 1 The 6 Apple MacBooks are not necessary items to support the use of the HPU.
- 2 The delivery note and delivery acceptance of the local purchases were not maintained in our ERP system.

Local purchases in excess or without a valid business purpose could be construed as a bribe.

By not creating and signing off on delivery documentation, does not support adherence to the FCPA in maintaining accurate books and records.



### What are the related MTS policy requirements?

#### Key Issues

- 1 The 6 Apple MacBooks are not necessary items to support the use of the HPU.
- 2 The delivery note and delivery acceptance of the local purchases were not maintained in our ERP system.

#### MTS Policy Requirements

- ✓ There needs to be a legitimate business purpose for reasonable local purchases.
- ✓ Delivery documentation is a required Finance control.
  - ✓ *For Materials: Proof of delivery and packing lists*
  - ✓ *For Labor or Services: Customer acknowledgement (e.g. a customer email)*

As Sales and Service employees, follow these policy requirements for materials, labor, or services:  
ORC-010 FCPA Compliance Policy  
ORC-010.03 Business Partner and Local Purchases Procedure

The following slides include two real-life situations to provide further explanation of how bribes were used at Panalpina and Embraer and the resulting penalties for their violations of the FCPA.

## Panalpina World Transport (Holding) Ltd. ("Panalpina")

### Violations

Between 2002 and 2007, Panalpina and its US-based subsidiary, Panalpina Inc., were accused of bribing foreign officials around the world, on behalf of customers.



- Panalpina's goal was to avoid delays in importing goods.
- Delays could happen for many reasons, such as delayed departures, incomplete or incorrect documentation, etc.
- Panalpina felt pressure from Panalpina's customers to:
  - ✓ Have services performed as quickly as possible
  - ✓ Receive preferential treatment regarding customs services

## Panalpina World Transport (Holding) Ltd. ("Panalpina")

### Bribe Scheme

- **Payment of Bribes:** Customers authorized Panalpina to pay bribes to foreign officials totaling at least \$27M in the following countries: Angola, Brazil, Kazakhstan, Nigeria, and Russia.
- **Invoicing Cover-Up:** Panalpina invoiced their customers for the bribes. The invoices concealed the bribes by inaccurately referring to them as "local processing," "special intervention," "special handling," and other seemingly legitimate fees.

### Penalties

- The U.S. Department of Justice charged Panalpina with violating the anti-bribery and books & records provisions of the FCPA.
- The Panalpina companies were:
  - Fined \$70.5M in an SEC settlement
  - Paid \$11.3M in disgorgement of profits

### Company Background

Panalpina World Transport (Holding) Ltd is a logistics and freight forwarding company involved in providing supply chain management solutions. The company's business divisions include air freight, ocean freight, logistics, energy and project solutions, road services, cargo security, and information solutions.

Customers often use Panalpina to ship goods internationally, or seek assistance with customs / logistics services in countries where their goods are shipped.

# FCPA Sales & Service Training

## Outside Violation Example #2



### Embraer S.A.

## Violations

Embraer executives and employees paid bribes to officials in the Dominican Republic, Saudi Arabia, and Mozambique. The bribes were paid by a U.S.-based subsidiary through fake third-party agents. The SEC also accused Embraer of an accounting scheme in India in which Embraer was allegedly hiding payments.



What	To	Why
Paid \$3.5M	To an influential Dominican Republic government official	To win a contract to sell 8 military aircraft to the Dominican Air Force.
Paid \$800K	To a high-level official at Mozambique's state-owned commercial airline	To win a contract to sell 2 aircraft to Mozambique airline.
Paid \$1.6M	To an official at a Saudi Arabian state-owned company	To win a contract to sell 3 aircraft to a Saudi Arabian state-owned enterprise.
Paid \$5.7M	To an agent in India, while concealing the relationship with the agent	To win a contract to sell 3 aircraft to the Indian Air Force.

## Embraer S.A.

### Bribe Scheme

**Payment Cover-Up:** Embraer made payments to the country governments and officials using various methods, such as:

- Payments to corporate shell entities
- Payments funneled thru third party via phony consulting agreements with no legitimate services to Embraer

### Penalties

- Embraer paid more than \$205M to the DOJ and SEC to resolve violations of the FCPA.
  - \$107M related to the criminal penalty to the DOJ
  - \$98M paid to the SEC in disgorgement of profits + interest
- The DOJ said that Embraer did not voluntarily disclose the FCPA violations and only began cooperating in the investigation after the SEC served it with a subpoena.
- Embraer disciplined executives and other employees for their bribery misconduct.

### Company Background

Embraer S.A. is a Brazilian aerospace conglomerate that produces commercial, military, executive and agricultural aircraft, provides aeronautical maintenance and repair services, and markets spare parts for its jets.

It is headquartered in São José dos Campos, São Paulo.

Embraer markets its aircraft to commercial airlines mainly in the United States and Europe and to governments in Europe and Latin America.

As you work with resellers, distributors and customers, remember to be aware of and fully understand compliance requirements, such as:

### Hospitality:

- ✓ Do not pay for hospitality during sales negotiations.
- ✓ Do not pay for excessive, lavish, or unreasonable expenses.
- ✓ Be aware that interactions with government officials may require approval from the Office of Risk and Compliance.

### Resellers:

- ✓ There needs to be a valid, legitimate business purpose for using a reseller in a transaction.
- ✓ Make sure the reason for reseller use is outlined in the final contract and matches the services described in the upfront reseller screening process.
- ✓ Screen resellers prior to being added to a contract.

### Local Purchases:

- ✓ There needs to be a legitimate business purpose for local purchases.
- ✓ Delivery documentation is a required Finance control.

# FCPA Sales & Service Training

## *Raising Questions and Concerns*



- » Anti-bribery and anti-corruption expectations are covered in the Global Code of Ethical Business Conduct, FCPA policies and procedures.
- » Bribery and corruption can be difficult to identify. The Office of Risk and Compliance is here to offer support, answer your questions and help address your concerns.
- » Always feel free to proactively ask questions and partner up front with the Office of Risk and Compliance. It takes all of us working together to ensure compliance.

### Who to go to with Questions

- ✓ Office of Risk and Compliance at [MTS\\_Risk\\_And\\_Compliance@mts.com](mailto:MTS_Risk_And_Compliance@mts.com)

### How to Report a Concern

- ✓ Your Supervisor or Human Resources
- ✓ Office of Risk and Compliance at [MTS\\_Risk\\_And\\_Compliance@mts.com](mailto:MTS_Risk_And_Compliance@mts.com)
- ✓ MTS AlertLine\* at <https://alertline.com> or 888-321-5562

\*Reports to the AlertLine have the option to be made anonymously.



I acknowledge that I:

1. Have completed a review of and understand the Anti-Bribery and Anti-Corruption Training slides
2. Am aware of the MTS FCPA policies and procedures
3. Know to contact the Office of Risk and Compliance with any questions
4. Understand the reporting options available if I have a concern