

Anti-bribery and Corruption (ABC) Compliance Programs

Frequently Asked Questions

As of April 2019

DELLEMC
PARTNER
PROGRAM

Disclaimer

Dell EMC is providing this FAQ document to emphasize your obligations to comply with all applicable anti-bribery and corruption (“ABC”) laws. It is not intended as and cannot substitute for legal advice. You remain responsible for complying with these laws and implementing appropriate policies and procedures to ensure your compliance, including an ABC compliance program. This guidance in no way modifies or negates any of your legal obligations under the Partner Code of Conduct or the respective Partner agreements with Dell EMC.



What are my ABC compliance obligations?

The following is a summary and reminder of the obligations set forth in the Partner Code of Conduct.

The Partner Code of Conduct states that you:

- Understand and comply with the Anti-Corruption Laws (U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business and other local anti-corruption or anti-bribery laws)
- Will never offer, promise, request, authorize or accept a bribe, directly or indirectly, for any reason
- Agree to maintain reasonable procedures, internal policies, controls and methods designed to ensure compliance with Anti-Corruption Laws
- Adopt a third party due diligence process for vetting third parties you engage in the context of Dell EMC business.
- Not work with any individual or entity that engages in or is suspected of engaging in bribes, kickbacks, fraud or other improper activities

What are the basic principles of the ABC laws?

- **US Foreign Corrupt Practices Act (1977) / UK Bribery Act 2010**
 - Purpose: to make it unlawful to make payments to foreign government officials to assist in obtaining business
 - Other laws: The U.S. Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act are just two examples of government legislation. More than 40 countries have adopted the [OECD Anti-Bribery Convention](#), which establishes legally binding standards to criminalize bribery of foreign public officials in international business transactions. The specifics of regulations vary by region and applicable laws
- **The Basics**
 - Do not give anything of value to a government official with the intent to obtain business. Don't accept bribes or kickbacks. Do not falsify accounting (keep clean books and records). Do not do business with third parties that do either of these things. Note that the UK Bribery Act and other laws also prohibit bribes to non-governmental parties

	U.S. Foreign Corrupt Practices Act	UK Bribery Act 2010
Bribery	Bribery of non-US government officials is prohibited	Bribery of private individuals, corporations and any government official are prohibited
Accepting a bribe	Not an offense	It is an offense to receive or accept a bribe from anyone, public or private
Facilitation Payments	Not prohibited, but discouraged by the US	Prohibited
Statutory Defense	No specific defense articulated	One statutory defense – “adequate procedures” in place to prevent bribery from occurring

What are the consequences if I violate these laws or the Dell EMC's Partner Code of Conduct?

- Dell EMC can enforce its contractual and legal rights including termination of our relationship with you
- Enforcement actions are often cross border, and fines and penalties can be in the billions
- In 2018, 16 companies paid a record \$2.89 billion to resolve FCPA cases. That includes amounts assessed in resolutions with the DOJ or SEC or both, and through DOJ declinations with disgorgement
 - There were three enforcement actions in the mega-case category -- Petrobras (\$1.78 billion), SocGen (\$585 million), and Panasonic (\$280 million). Petrobras and SocGen followed the new structure for global resolutions, with the DOJ and SEC assessing total penalties but allowing the companies to pay some of the penalties to enforcement agencies and regulators in other countries
- In 2017, 11 companies paid just over \$1.92 billion to resolve FCPA cases.

What are the basic elements of an ABC compliance program?

The elements of an effective compliance program are:

<i>Tone at the Top</i>	A commitment from senior management and a clearly articulated policy against corruption.
<i>Code of Conduct & Compliance Policies</i>	Policies and procedures detailing proper internal controls, auditing practices, documentation policies and disciplinary measures should be in place.
<i>Oversight, Autonomy and Resources</i>	Individuals in charge of oversight should have autonomy from management and should have sufficient resources to ensure the program is implemented correctly.
<i>Risk Assessment</i>	Companies should regularly analyze and address the specific risks they face.
<i>Training</i>	Companies should take the appropriate steps to ensure that the policies and procedures have been communicated effectively throughout the organization.
<i>Incentives and Disciplinary Measures</i>	Clear disciplinary procedures should be in place and the adherence to compliance policies and procedures should be incentivized throughout the company.
<i>Third-Party Due Diligence & Payments</i>	Third-parties should be assessed regularly and should be informed of the company's compliance program and code of conduct.
<i>Reporting</i>	Employees must be able to report violations without fear of retaliation. The compliance program and internal controls should be updated after an internal investigation.
<i>Testing and Review</i>	Compliance program should be reviewed and tested for effectiveness.

Where can I find guidance on effective ABC compliance programs?

- A robust program depends very much on whether a company has tailored its policies and processes to address its specific risks
- In its [2012 Resource Guide to the U.S. Foreign Corrupt Practices Act \(the “FCPA Guide”\)](#), the DOJ specifically advised: “Effective compliance programs are tailored to the company’s specific business and to the risks associated with that business. They are dynamic and evolve as the business and the markets change”
- The DOJ emphasizes that when it comes to compliance, there is no one-size-fits-all program. Individual companies may have different needs depending on their size and the particular risks associated with their businesses
- Dell EMC’s policy is available upon request as a example. Your policy and ABC program should be tailored to the risk profile of your company.

What are the basic requirements to comply with ABC laws and the Code?

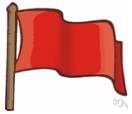
- ✓ DO NOT make any payment or offer any payment intended to induce the recipient to misuse his official position
- ✓ DO NOT accept bribes or kickbacks
- ✓ DO know who and which business entities trigger ABC awareness—foreign officials, close relatives of foreign officials, companies owned in part by the government or by foreign officials
- ✓ DO maintain a list of all of your clients, customers, and sales, marketing or other business contacts who are foreign officials
- ✓ DO cross-check business partners' conduct against the red flags list
- ✓ DO clearly identify all expenses by jurisdiction and type
- ✓ DO report conduct you have good reason to believe violates the Code or any laws prohibiting bribe payments
- ✓ Do have an ABC policy and standards to help prevent wrongdoing.
- ✓ Do have reporting mechanisms for possible wrongdoing
- ✓ Do assess the company's risks and train employees regularly to ensure that the compliance requirements are understood and followed

What are some examples of red flags?

- ❖ The transaction is in a high-risk country or industry
- ❖ Government official or close ties to government official
- ❖ Unqualified or unidentified third parties
- ❖ Excessive margins or unreasonable charges or cash payments
- ❖ Lack of transparency or documentation in expenses or accounting records
- ❖ Unnecessary middleman or broker
- ❖ Unusual payment patterns or financial arrangements
- ❖ Involvement of a shell or holding company
- ❖ Third party has a poor reputation or has been accused of improper business practices
- ❖ Third party's value is based primarily on connections or access to information
- ❖ Payment to an entity that is owned or influence by a government official
- ❖ Gifts or other payments to or from parties engaged in a competitive bidding process or contract negotiations

What are examples of prohibited behavior/red flags?

- Your public customer request a trip to visit the manufacturing facility before committing to purchase. The customer in Europe requests this trip to the plant in the U.S. and desires luxury accommodations for him and his family
- Customer requests that you use an agent as an intermediary to help facilitate getting through the “red tape.” Agent’s fees are excessive and the services provided are vague
- You are negotiating with a government minister, and she asked that your company contribute her favorite charity. The amount of the donation is small in comparison to the business and the cause is a good one



In each situation, there is something of value being given to potentially influence a decision maker.

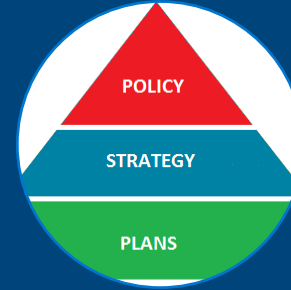
Do you know your customers?



With whom are we dealing? Do you know the customer and any reps or agents involved?



Who is receiving the payment?



Are the company's processes being followed in the deal?



Can you confidently explain the deal and why the parties are in it?



The Dell EMC logo is centered within a white rectangular border. It features the word "DELL" in a bold, sans-serif font, followed by a stylized icon consisting of three parallel, slanted lines of increasing length, and then the letters "EMC" in a regular, sans-serif font.

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