



frequently
asked
QUESTIONS

FCPA

1. What is a gift?

A gift is anything of value, usually items of less than 50 USD as well as company logo promotional items: pens, key chains, and mugs are excluded from concern. This does not mean we could give the same customer a dozen Titleist Pro V Vishay logo golf balls every week so he/she is supplied all season. Business dinners are excluded as gifts if for business, not repetitive to same party, not of excessive value, and not intended to influence a favorable business decision by the recipient but rather just a business courtesy. Vishay has hosted dinners with US Government personnel and they insisted we go to a reasonable cost place and insisted on two separate checks or split the bill proportionally right there at payment in front of all attendees—very clean. It is generally better not to give or receive gifts because our integrity is worth more than a small gift and worth more than a large gift. But of course reasonable cost business dinners are a normal business courtesy and are not an issue. It's the excess that raises a concern—expensive company paid dinners after the company paid hard-to-get-tickets-for-soccer game. A dinner costing two hundred dollars per person seems excessive.

Examples:

a) Company logo pen	Acceptable
b) Company logo key chain	Acceptable
c) Company paid weekend trip to Italy	Unacceptable
d) Business dinner for four people (2 company, 2 customer) total cost 450 USD	Acceptable
e) Business dinner for six people (1 company, 5 customer) total cost 1,200 USD	Unacceptable <i>Appearance is important, in this case it appears company person is courting favor with customer people</i>
f) Five customer people and 2 company people go to horse racing track followed by dinner at company cost	Unacceptable <i>The appearance is company is attempting to influence customer's personnel</i>
g) Company person takes same customer person or persons to expensive dinner (cost 150 USD per person) every other month	Unacceptable <i>It appears company person is trying to win customer's favor over time through expensive dinner</i>
h) Two company people take two Foreign Government people to expensive dinner (150 USD per person)	Unacceptable <i>It appears company persons are trying to influence government person, FCPA violation</i>
i) Company person gifts wine to customer	Unacceptable <i>If low cost wine, it is not worth the perception that company person is trying to influence customer person. If expensive wine/case(s) of wine then clearly company person is trying to influence customer—so in either case this is unacceptable</i>



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2. What is a Facilitating Payment?

Facilitating Payments – Well you have identified the soft spot in this FCPA subject, soft because it is not black and white, it can be a little gray. We have included the section on Facilitating Payments because by US law such payments are allowed under certain conditions. We have also stated in this training module that Vishay policy does not allow Facilitating Payments. Why the contradiction, because we wanted to state the legal position and the Vishay policy position. There could be reasons that would allow Vishay to permit facilitating payments under certain circumstances, so we didn't want to state these payments are absolutely, always illegal. We certainly do not believe such payments should be routine, rather the rare exception, specially approved, and must be recorded as Facilitating Payments. Some more details:

1. The intent of these Facilitating Payments is to cover fees which are usual and normal in some countries for activities such as: connecting utilities (water, gas, electric, telephones) by employees of perhaps government owned or regulated services, or obtaining a Visa. In these cases, Facilitating Payments may be permitted if normal and customary, should always be approved by the Vishay Legal Department, should be one-time events, not routine recurring payments, most likely will be significantly less than 500 USD and must be accurately recorded as a Facilitating Payment.
2. The UK Anti-bribery Law does not allow Facilitating Payments.
3. Vishay Policy does not allow Facilitating Payments – however if an employee is presented a situation whereby a Facilitating Payment is customary and normal and is expected, Vishay may pay it. The important point is to:
 - a) have the payment approved by Vishay Legal
 - b) properly record the payment as a Facilitating Payment. The worst thing we can do is to try to hide/mask/re-categorize the payment. Even if incorrectly made we need to be transparent. Honest mistakes can happen, cover-up is never correct.
4. One thought is, what is the purpose of payment? Is it to facilitate the installation of a service – might be OK. Is it to avoid an inspection, duty, tax – not OK. We should carefully avoid anything to do with special payments in the area of Customs/Import/Export. This is of course a highly suspect and monitored area.

Because this is a gray area that has been abused in the past, it is best to avoid facilitating payments if at all possible. But never say never, because you never know what may arise. Still Facilitating Payments are not permitted by Vishay Policy, so there must be a really good reason to make an exception.