

**ACCESS '96**

**INTERNATIONAL ALLIANCES  
BREAKOUT**

**WYNDHAM HOTEL AT LOS ANGELES AIRPORT  
OCTOBER 9, 1996**

**PAUL HASEMAN  
INTERNATIONAL COUNSEL  
HUGHES AIRCRAFT**

**JAMES McALEESE  
PRINCIPAL  
McALEESE & ASSOCIATES**

**CHARLES E. RUMBAUGH  
CORPORATE DIRECTOR OF  
CONTRACTS & PRICING,**

# **ACCESS '96 / INTERNATIONAL ALLIANCES BREAKOUT**

**COMPANY**

**McLEAN, VA**

**LEAR ASTRONICS CORP.**

**“GLOBALIZATION -- IT’S NOT A LUXURY ANYMORE, IT’S A NECESSITY. BUT DECIDING YOU NEED A FAR-FLUNG ORGANIZATION IS ONLY THE FIRST STEP. NOW YOU HAVE TO CREATE IT.”**

THE WALL STREET JOURNAL (9/26/96)

**BUT “GREAT TRADE WILL ALWAYS BE ATTENDED WITH CONSIDERABLE ABUSES.”**

EDMUND BURKE, SPEECH ON CONCILIATION WITH AMERICA (1775)

**INTERNATIONAL ALLIANCES CAN OPEN MARKETS FOR NEW PROFITS, BUT “CONSIDERABLE ABUSES” WILL BEFALL U.S. CONTRACTORS WHO NEGLECT TO CRAFT AND IMPLEMENT THE PROTECTIVE STRATEGIES PRESENTED IN THIS BREAKOUT SESSION.**

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## SCENARIOS

1. **FOREIGN MILITARY SALE (FMS)**: US/Foreign Contractor Team sells military or “dual use” production item to USG; USG sells item to Foreign Gov't (e.g., A-10, F-15, F-16)

➤ ➤ ➤ US/Foreign Contractor Team ⇔ USG ⇔ Foreign Gov't <<<

2. **“DISRUPTED DEVELOPMENT”**: Service-specific development program that DoD suddenly opened for international co-development

➤ ➤ ➤ US/Foreign Contractor Team ⇔ USG and Foreign Gov't <<<

3. **DIRECT MILITARY SALE**: US/Foreign Contractor Team sells military item to Foreign Gov't (if US funds, then “Foreign Military Funding” (FMF))

➤ ➤ ➤ US/Foreign Contractor Team ⇔ Foreign Gov't <<<

4. **DIRECT COMMERCIAL SALE**: US/Foreign Team sells “dual use” or commercial item to Foreign Gov't or commercial item to foreign commercial customer

➤ ➤ ➤ US/Foreign Contractor Team ⇔ Foreign Gov't or Company <<<

5. **EXCESS DEFENSE ARTICLES**: USG sells excess defense articles to Foreign Gov't; US/Foreign Contractor Team performs Service-Life Extension Program (SLEP)

➤ ➤ ➤ USG ⇔ Foreign Gov't ⇔ SLEP Contract to US/Foreign Team <<<

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## SCENARIO PROS AND CONS

SCENARIO	PROS	CONS
FMS	PAYMENT GUARANTEED BY USG; PAYMENT IN DOLLARS; PROGRESS PAYMENTS; US LAW GOVERNS CHANGES, DISPUTES, DATA RIGHTS; LOW SELLING COSTS; EASIER MARKETING B/C USG's USE IS ENDORSEMENT	3% USG ADMIN CHARGES (+ 8-10% NONRECURRING R&D, UNLESS WAIVED UNDER NEW ACT) HURT COMPETITIVE POSITION; CONTRACTOR SUBJECT TO PANOPLY OF USG REGS & CRIMINAL TRIGGERS; PROFIT LIMITED
"DISRUPTED DEVELOPMENT"	SAME AS FMS + ASSURED IN-COUNTRY ACCESS	LOSS OF WORK SHARE; RISK OF PARTNER NOT CARRYING ITS WEIGHT; NO PRACTICAL ABILITY TO EXIT
DIRECT MILITARY SALE	HIGHER MARK-UP THAN SALE TO USG	HIGH SELLING COSTS; DISPUTE RECOURSE AT RISK B/C BUYER IS SOVEREIGN
DIRECT COMMERCIAL SALE	MOST LUCRATIVE (e.g., charge dev costs, training, spares, logistics, etc.); TINA, CAS, etc. DO NOT APPLY	HIGH SELLING COSTS; PAYMENT & CURRENCY ISSUES UNLESS FMF
EXCESS DEFENSE ARTICLES	OPP'Y FOR SLEP CONTRACT	SAME AS DIRECT MILITARY

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		SALE
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# ACCESS '96 / INTERNATIONAL ALLIANCES BREAKOUT

## INT'L ALLIANCE DRIVERS/PULLERS FOR COMPANIES

### US COMPANY "DRIVERS"

### FOREIGN COMPANY "PULLERS"

<b>ACCESS TO OTHERWISE CLOSED MARKET / POLITICAL CLOUT</b>	<b>ACCESS TO US MARKET / MORE BUSINESS / "REVERSE OFFSET"</b>
<b>ACCESS TO NEW MARKET AT LOW COST / EASIER LEARNING CURVE</b>	<b>ACCESS TO US TECHNOLOGY (b/c better, cheaper, or complementary)</b>
<b>MEET OFFSET REQUIREMENTS (that foreign gov'ts translate as "jobs")</b>	<b>ACCESS TO US KNOW-HOW (e.g., training, business methods)</b>
<b>EASIER ACCESS TO THIRD-COUNTRY MARKET(S) (e.g., EU via UK)</b>	<b>MARKETING BOOST (e.g., access to US partner's markets)</b>
<b>ACCESS TO FOREIGN TECHNOLOGY AND/OR FUNDING</b>	<b>NATIONAL PRESTIGE (e.g., Brazil space program)</b>
<b>OPP'Y TO EMBED TECHNOLOGY TO CAPTURE LOGISTICS &amp; LIFE-CYCLE</b>	<b>ACCESS TO CONVERTIBLE DOLLAR</b>

## **MAJOR AVIATION / AEROSPACE OVERSEAS MARKETS**

- 1. EUROPE**
  - a) WESTERN EUROPE**
  - b) NEWLY EMERGING DEMOCRACIES (CENTRAL/EASTERN EUROPE)**
- 2. MIDDLE EAST (e.g., EGYPT, ISRAEL, JORDAN, KUWAIT, SAUDI ARABIA)**
- 3. CHINA**
- 4. PACIFIC RIM**

## INT'L COOPERATION "DRIVERS" FOR USG

- **60% DECLINE OF DEFENSE BUDGET SINCE 1985 + HIGH COST OF DEVELOPING NEW DEFENSE-RELATED TECHNOLOGY (e.g., MEADS)**
- **GROWING "BUY AMERICAN" BACKLASH & "FORTRESS EUROPE" PREFERENCE**
- **NEW DoD 5000 "HIERARCHY OF MATERIEL ALTERNATIVES":**
  - (1) **ALREADY-DEVELOPED US OR ALLIED SYSTEMS OR EQUIPMENT;**
  - (2) **INT'L COOPERATIVE DEVELOPMENT PROGRAM;**
  - (3) **NEW JOINT SERVICE DEVELOPMENT PROGRAM; AND**
  - (4) **NEW SERVICE-UNIQUE DEVELOPMENT PROGRAM**

- ◆ **BUT ASD KAMINSKI FRACTURED DEVELOPMENT & JEOPARDIZED CONTRACTORS' PROPRIETARY TECHNOLOGIES, WHOLLY FUNDED R&D, "LOSS LEADER," FRP RUN, & LIFE-CYCLE SUPPORT, PLUS SIGNIFICANTLY RAISED B&P**
- ◆ **DISCRETE VEHICLES EXIST TO PRE-EMPT INT'L DISRUPTION AND RECOVER WHOLLY FUNDED R&D AND LOST PROFITS**

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## PROPOSED DOD/INT'L COOPERATIVE AGREEMENTS

(source: Defense News, May 27-June 2, 1996)

### Army

Digitization A "system of systems" providing the warfighter a digital information network that supports warfighting systems and assures command and control (C2) decision cycle superiority

### Navy

High Speed Anti Radiation Missile Upgrade Improve navigation and targeting to counter advanced threats and reduce fratricide

New Generation Surface Attack Missile Develop an advanced stand-off surface attack missile based on the Navy's Harpoon, but not more effective in a littoral movement

E-2C Hawkeye Improvements Develop selected upgrades to the E- 2C Aircraft

### Air Force

Experimental Air Operations Center Using Contingency Theater Automated Planning System (CTAPS) Develop an experimental combined air operations center using CTAPS as a baseline. Some of the objectives include demonstrating enhancements in the compatibility of each country's C2 assets and automation of the Air Battle Planning and Management Process. Could be forerunner to using CTAPS in NATO's air Command and Control System

F-16 Multinational Program Desire to update reconnaissance capability, electronic countermeasures and Helmet Cueing System (memorandum of understanding already in place for managing F-16 multinational fighter upgrades)

NATO Alliance Ground Surveillance NATO defense ministers desire a NATO-owned system. Joint Surveillance Target Attack Radar system is US

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Program

candidate. Other candidates are British Astor, French Horizon and Italian Creso

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## PROPOSED DOD/INT'L COOPERATIVE AGREEMENTS

### Air Force (continued)

NATO Airborne Warning and Control System (AWACS) Mid-Term Modernization Program

NATO military Committee seeks an upgrade to the NATO AWACS aircraft. Cooperative opportunities exist, using the US. Extend Sentry/Objective program as a starting point

Joint Air-to-Surface Standoff Missile (JASSM, Air Force and Navy Program), further talks

US and Britain are discussing approaches for cooperation between JASSM and Britain's Conventionally Armed Standoff Missile Point

Future Medium Range Air-to-Air Missile, Further Talks

Britain has a requirement for an AMRAAM type missile with longer range, sophisticated electronic counter countermeasures, increased no-escape zone and a 25-year service life which could be exported to Eurofighter 2000 customers. The missile requires advanced seeker capability and air breathing motor

NATO Common Missile Warning Systems

NATO has developed a requirement for a missile warning system to protect allied aircraft. Discussions are ongoing to find out if current US systems could be used as the foundation for NATO nations' requirements

Advanced Military Satellite Communications

Deputy undersecretary of defense for space is proposing US assistance in the development of the French EHF satellite program. Government-to-government discussions are under way to develop a memorandum of agreement for related cooperative opportunities

### Ballistic Missile Defense Organization

Multifunctional Electronically Scanned Adaptive Radar

Develop a 1,264-element S-band (3 gigahertz) solid-state, phased radar capable of operating in an electronic countermeasure environment

AWACS Extended Airborne Global Launch Evaluator Sensor

Develop inferred search-and-track system with eye-safe laser ranger. Detects theater ballistic missiles late in boost phase; tracks until shortly after burnout. Provides precise trajectory cueing to the control radar

Navy Theater Wide Program

Develop a missile defense system against medium and long range missile theaters. This system is being developed around the existing Standard Missile and the Aegis radar

## **SPECIALIZED SOURCES OF FINANCING**

1. **FOREIGN MILITARY FINANCING (FMF)**
  - a) **USG LOANS/GRANTS FOREIGN GOVERNMENT \$\$\$ TO PAY FOR FMS OR DIRECT MILITARY SALE;**
  - b) **FUNDS SUBJECT TO FOREIGN OPS APPROPRIATIONS RESTRICTIONS**
  
2. **EXPORT-IMPORT ("EXIM") BANK**
  - a) **USG AGENCY;**
  - b) **GUARANTEES LOANS FOR COMMERCIAL EXPORTS**
  
3. **DEFENSE EXPORT LOAN GUARANTEES ("DELG")**
  - a) **NEW PROGRAM TO GUARANTEE LOANS UP TO \$15B FOR DEFENSE EXPORTS;**
  - b) **IMPLEMENTED BY DoD's OFFICE OF INT'L AND COMMERCIAL PROGRAMS**

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# KEY INDUSTRIAL CULTURE DIFFERENCES IN LARGEST AVIATION / AEROSPACE MARKETS

### U.S.

### EUROPE

<b>SINGLE MARKET</b>	<b>FRAGMENTED BUT INTEGRATING</b>
<b>DOMESTIC MARKET STILL SUFFICIENT TO SUSTAIN MOST INDUSTRIAL BASE</b>	<b>DOMESTIC MARKETS INSUFFICIENT TO SUSTAIN NATIONAL INDUSTRY</b>
<b>COMPETITIVE PROCUREMENT AMONG US COMPANIES IN MOST AREAS</b>	<b>MIXTURE OF DIRECTED AND COMPETITIVE PROCUREMENTS</b>
<b>TWO OR MORE COMPETITORS IN MOST TECHNOLOGY SECTORS</b>	<b>NATIONAL CHAMPIONS IN MANY SECTORS; OFTEN 1 EURO INDUSTRIAL ALLIANCE IN CRITICAL TECHNOLOGIES</b>
<b>ARMS-LENGTH GOV'T-INDUSTRY RELATIONSHIP</b>	<b>NATIONAL TREATMENT VARIES WIDELY</b>
<b>EXPORTS INCREASINGLY IMPORTANT TO DEFENSE INDUSTRY</b>	<b>EXPORTS ESSENTIAL TO DEFENSE SECTORS</b>
<b>GOV'T-TO-GOV'T COLLABORATION IS STILL RELATIVELY NEW PHENOMENON</b>	<b>TRANSNATIONAL COLLABORATION THE NORM THROUGHOUT PROGRAM LIFE</b>
<b>SURVIVAL OF THE FITTEST</b>	<b>SUBSIDIES ARE A FACT OF LIFE</b>
<b>LEVEL PLAYING FIELD</b>	<b>BIG HOME FIELD ADVANTAGE</b>

## LEGAL FORM / RELATIONSHIP

- LETTER OF INTENT / MOU OR MOA / TEAMING AGREEMENT
- CLASSIC PRIME / SUBCONTRACTOR RELATIONSHIP
- GENERAL / LIMITED PARTNERSHIP
- JOINT VENTURE
- CORPORATE “JOINT VENTURE”
- DISTRIBUTORSHIP
- PATENT / TECHNOLOGY LICENSING / DEVELOPMENT
- MANUFACTURING AGREEMENT
- MARKETING AGREEMENT
- PURCHASE / INVESTMENT IN FOREIGN ENTERPRISES
- OTHER FORMS OF “VEHICLES” FOR ALLIANCES

**“WORK SPLIT” ISSUES**

**WORK SPLIT**

**IS IT CRYSTAL CLEAR AS TO WHO DOES WHICH TASKS UNDER THE CONTRACT AND STATEMENT OF WORK (SOW)?**

**WHO HAS LEAD AUTHORITY/RESPONSIBILITY IF, e.g., A MECHANICAL OR SOFTWARE INTERFACE DOES NOT OPERATE IAW THE SPECS?**

**DOES THE DEVELOPER GET RIGHTS IN TECH DATA OR SOFTWARE DEVELOPED UNDER THE CONTRACT, OR**

**COST SHARING**

**HOW ARE COSTS SHARED? ON BASIS OF COSTS INCURRED OR BY A PRE-SET FORMULA?**

**WHAT HAPPENS IF ONE PARTY HAS COST OVERRUNS? WHAT HAPPENS IF BOTH DO?**

**IF YOU HAVE OFFSET REQUIREMENTS, DO THEY COUNT AS PART OF YOUR COST SHARE?**

**REVENUE SPLITTING**

**HOW ARE REVENUES SPLIT? ON BASIS OF COSTS INCURRED OR BY A PRE-SET FORMULA?**

**DOES YOUR REVENUE-SPLITTING AGREEMENT TAKE INTO ACCOUNT FOREIGN EXCHANGE FLUCTUATIONS AND POSSIBLE CHANGES IN EXCHANGE CONTROLS?**

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ARE THE RIGHTS SPLIT?

## TYPES OF “OFFSETS”

**DIRECT OFFSET**: CONTRACT FOR MILITARY EXPORT REQUIRES DIRECTED SUBCONTRACT FOR RELATED COMPONENTS OR SERVICES

**INDIRECT OFFSET**: CONTRACT FOR EXPORT REQUIRES DIRECTED SUBCONTRACT FOR ITEMS UNRELATED TO THE MILITARY ITEM

**CO-PRODUCTION**: GOV'T-TO-GOV'T AGREEMENT FOR OVERSEAS PRODUCTION BY FOREIGN GOV'T OR CO. THAT ACQUIRES TECHNOLOGY TO BUILD ALL OR PART OF U.S.-ORIGIN DEFENSE ITEM

**LICENSED PRODUCTION**: OVERSEAS PRODUCTION OF U.S.-ORIGIN DEFENSE ITEM BASED ON SALE OF TECHNOLOGY TO FOREIGN GOV'T OR PRODUCER

**SUBCONTRACTOR PRODUCTION**: FOREIGN SUB MAKES COMPONENT OF U.S.-ORIGIN DEFENSE ITEM

**OVERSEAS INVESTMENT**: CAPITAL INVESTMENT IN FOREIGN SUBSIDIARY OR JOINT VENTURE TO SATISFY OFFSET REQUIREMENT

**TECHNOLOGY TRANSFER**: US OWNER TRANSFERS TECHNOLOGY FOR FOREIGN R&D OR TECHNICAL ASSISTANCE TO SATISFY OFFSET REQUIREMENT

**COUNTERTRADE**: INDIRECT OFFSETS IN THE FORM OF BARTER, COUNTER-PURCHASE (commitment to buy or find buyer for goods from the original importer), OR COMPENSATION (OR BUY-BACK) (agreement by original exporter to accept as full or partial repayment products derived from the original exported product).

### **EXAMPLES OF “OFFSETS”**

- **McDONNELL DOUGLAS WILL OFFSET UK'S \$4B APACHE HELICOPTER BUY BY (1) MAKING SOME UNITS IN UK, (2) BUYING \$350M IN UK EQUIPMENT FOR HELICOPTERS MADE IN U.S., AND (3) AGREEING TO \$955M IN OPTIONS FOR FUTURE SERVICES BY UK FIRM (WESTLAND)**
- **LOCKHEED-MARTIN WILL OFFSET SALE TO TAIWAN OF 150 F-16s BY AWARDING TAIWAN FIRMS REPAIR CONTRACTS FOR 500 COMPONENTS**
- **GD SATISFIED OFFSET REQUIREMENTS FOR TANK SALES TO SAUDI ARABIA BY AWARDING SAUDI FIRM SUBCONTRACT TO MAKE TANK CIRCUIT BOARDS**
- **McDONNELL DOUGLAS HELICOPTER OFFSET SALE OF AH-64 APACHE HELICOPTERS TO UAE BY FORMING JOINT VENTURES WITH UAE COMPANIES TO, e.g., CLEAN UP OIL SPILLS, AND RECYCLE USED COPIER AND PRINTER TONER CARTRIDGES**
- **LOCKHEED-MARTIN TACTICAL AIRCRAFT SYSTEMS IS OFFSETTING SOUTH KOREAN BUY OF 120 F-16s BY, e.g., AGREEING TO CO-DEVELOPMENT OF NEW TRAINER AIRCRAFT, TRAINING, TECHNOLOGY TRANSFER AND CONTRACTS FOR REPAIR AND OVERHAUL OF AEROSPACE EQUIPMENT**

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## PROTECTING PROPRIETARY TECHNOLOGIES

1. PATENTS -- LIMITED TO JURISDICTION IN WHICH GRANTED
2. TECHNICAL DATA
  - a) IN US, CONTRACTOR HAS RIGHTS IN TECH DATA IT DEVELOPED;
  - b) DoD's RIGHTS DEPEND ON SOURCE OF FUNDS OF DEVELOPMENT;
  - c) OTHER USG AGENCIES' RIGHTS DEPEND ON SOURCE OF FUNDING, IF REQUIRED FOR PERFORMANCE, OR DESIGNATED AS DELIVERABLE;
  - d) COMMERCIAL ITEMS PRESUMED DEVELOPED AT PRIVATE EXPENSE;
  - e) FOREIGN RIGHTS VARY
3. COMPUTER SOFTWARE
  - a) IN US, CONTRACTOR HAS RIGHTS IN TECH DATA IT DEVELOPED;
  - b) DOD'S RIGHTS DEPEND ON SOURCE OF FUNDS OF DEVELOPMENT, AND DETERMINATION IS MADE AT LOWEST SEGREGABLE LEVEL;
  - c) OTHER USG AGENCIES' RIGHTS DEPEND ON SOURCE OF FUNDING, IF REQUIRED FOR PERFORMANCE, OR DESIGNATED AS DELIVERABLE;
  - d) COMMERCIAL ITEMS PRESUMED DEVELOPED AT PRIVATE EXPENSE;
  - e) FOREIGN RIGHTS VARY
4. COPYRIGHT -- TECH DATA & SOFTWARE PROTECTABLE BY INT'L CONVENTION

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### **5. TRADE SECRETS -- ENFORCEMENT VARIES**

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## EXPORT CONTROLS

**NOTE: “EXPORTS” INCLUDE (1) SENDING DEFENSE OR DUAL-USE ARTICLE FROM US; (2) TRANSFER OF SAME TO FOREIGN PERSON IN US; (3) DISCLOSING COVERED TECH DATA, SOFTWARE, OR INFORMATION TO FOREIGN PERSON IN US (e.g. during plant visit) OR ABROAD; AND (4) PERFORMING DEFENSE SERVICE FOR FOREIGN PERSON, WHETHER IN US OR ABROAD.**

### MILITARY

### “DUAL USE”

### COMMERCIAL

<b>BASIC STATUTE</b>	<b>ARMS EXPORT CONTROL ACT (AECA)</b>	<b>EXPORT ADMIN ACT (EAA)*</b>	<b>EXPORT ADMIN ACT (EAA)</b>
<b>GOVERNING REG</b>	<b>INT’L TRAFFIC IN ARMS REG (ITAR)</b>	<b>EXPORT ADMIN REG (EAR)</b>	<b>EXPORT ADMIN REG (EAR)</b>
<b>JURISDICTION</b>	<b>STATE DEP’T OFFICE OF DEFENSE TRADE CONTROLS (DTC)</b>	<b>COMMERCE DEP’T BUREAU OF EXPORT ADMIN (BXA)</b>	<b>COMMERCE DEP’T BUREAU OF EXPORT ADMIN (BXA)</b>

\* Continuing under Executive Order until EAA is re-authorized.

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## EXPORT CONTROLS (continued)

	MILITARY	DUAL USE	COMMERCIAL
<b>COVERAGE</b>	<b>DEFENSE ARTICLES ON MUNITIONS LIST, PLUS RELATED TECH DATA, SOFTWARE, AND INFORMATION</b>	<b>DUAL-USE ITEMS IN COMMERCE CONTROL LIST, PLUS RELATED TECH DATA, SOFTWARE, AND INFORMATION</b>	<b>COMMERCIAL ITEMS, TECH DATA AND SOFTWARE</b>
<b>LICENSES</b>	<b>REQ'D FOR ANY COVERED EXPORT</b>	<b>VALIDATED LICENSE REQ'D FOR CERTAIN DESTINATIONS</b>	<b>VALIDATED LICENSE REQ'D FOR CERTAIN DESTINATIONS</b>
<b>PENALTIES FOR VIOLATIONS</b>	<b>CIVIL FINES TO \$100K; CRIMINAL FINES TO \$1M; TO 10 YRS PRISON; LOSS OF EXPORT PRIVILEGES; DEBARMENT</b>	<b>CIVIL FINES TO \$10K; CRIMINAL FINES TO \$50K OR 5X EXPORT VALUE; TO 5 YRS PRISON, LOSS OF EXPORT PRIVILEGES, DEBARMENT</b>	<b>CIVIL FINES TO \$10K; CRIMINAL FINES TO \$50K OR 5X EXPORT VALUE; TO 5 YRS PRISON, LOSS OF EXPORT PRIVILEGES, DEBARMENT</b>

## **FOREIGN CORRUPT PRACTICES ACT (FCPA)**

- **PROHIBITS ANY US “PERSON” -- INDIVIDUALS AND BUSINESS ENTITIES -- FROM**
  - (1) MAKING GIFT, OFFER, PROMISE OR AUTHORIZATION OF PAYMENT OF MONEY OR ANYTHING OF VALUE TO**
  - (2) ANY FOREIGN OFFICIAL OR POLITICAL PARTY**
  - (3) FOR PURPOSE OF CORRUPTLY INFLUENCING OR INDUCING -- DIRECTLY OR INDIRECTLY -- ANY ACT, DECISION, INACTION OR USE OF INFLUENCE**
  - (4) TO OBTAIN OR RETAIN BUSINESS OR DIRECT BUSINESS TO 3d PARTY**
- **FCPA APPLIES EVEN IF PURPOSE NOT ACHIEVED OR PAYMENT NOT RECEIVED**
- **EXCEPTION: “ROUTINE GOVERNMENTAL ACTION,” e.g., PAYMENT FOR LICENSE**
- **FCPA IMPOSES SPECIAL ACCOUNTING STANDARDS ON ALL COMPANIES REPORTING TO SEC, REGARDLESS OF FOREIGN BUSINESS**

**PENALTIES:**  
**BUSINESS ENTITY**  
**INDIVIDUAL**

**CIVIL**  
**FINES UP TO \$10K**  
**FINES UP TO \$10 K**

**CRIMINAL**  
**FINES UP TO \$2M**  
**(1) FINES UP TO \$100K;**  
**(2) PRISON UP TO 5 YRS**

**SALE OF GOODS**

**UN CONVENTION ON CONTRACTS  
FOR THE INT'L SALE OF GOODS**

**v.**

**UNIFORM COMMERCIAL CODE (UCC)**

**DISPUTE RESOLUTION**

**LITIGATION**

**ALTERNATIVE DISPUTE  
RESOLUTION (ADR)**

<b>FORUM -- U.S., OTHER PARTY'S COUNTRY, THIRD PARTY</b>	<b>FORUM -- U.S., OTHER PARTY'S COUNTRY, THIRD PARTY</b>
	<b>FORMAT -- e.g., PARTNERING, MEDIATION, BINDING OR NON-BINDING ARBITRATION</b>
<b>CHOICE OF LAW</b>	<b>CHOICE OF LAW</b>
<b>SCOPE -- LIMITED OR UNLIMITED (IF LIMITED, PROVIDE FOR RESOLUTION OF ISSUES OUTSIDE SCOPE, e.g., ADR OR IN-COUNTRY PM DECIDES)</b>	<b>SCOPE -- LIMITED OR UNLIMITED (IF LIMITED, PROVIDE FOR RESOLUTION OF ISSUES OUTSIDE SCOPE OF ADR, e.g., IN-COUNTRY PM DECIDES)</b>

**DISPUTE RESOLUTION**  
(continued)

**LITIGATION**

**ALTERNATIVE DISPUTE  
RESOLUTION (ADR)**

	<b>CHOICE OF LANGUAGE</b>
	<b>APPLICABLE RULES (e.g., AAA, ICC, London, Zurich)</b>
	<b>SELECTION OF PANELISTS, NUMBER &amp; TYPE (i.e., NEUTRAL OR NON-NEUTRAL)</b>
	<b>DISCOVERY</b>
	<b>REMEDIES</b>
	<b>REASONS FOR AWARD</b>
	<b>ENFORCEMENT</b>

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## CHECKLIST

- √ EXIT STRATEGY
- √ REPATRIATION OF PROFITS
- √ CONVERTIBILITY OF CURRENCY
- √ TAX TREATY WITH US?
- √ DISPUTE RESOLUTION CLAUSE
- √ WORK SPLIT SPELLED OUT
- √ PAYMENT METHOD & SCHEDULE
- √ COMPLIANCE W/ EXPORT CONTROLS
- √ BUDGETS
- √ HIRING/FIRING OF PERSONNEL
- √ PURCHASES/LEASES/SALES OF ASSETS
- √ CREATION OF LIENS
- √ TRANSFERS OF INTEREST (PUT/CALL)
- √ COMMITMENT AUTHORITY
- √ TECHNOLOGY LICENSING
- √ OUTSIDE AUDITORS
- √ TRANSACTIONS W/ AFFILIATES
- √ MERGERS, DISSOLUTIONS
- √ CAPITAL EXPENDITURES
- √ GUARANTEES

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