



**U.S. CAMPAIGN
FINANCE LAWS
&**

U.S. SUBSIDIARIES

NABPAC BRIEFING

May 30, 2012

Jan Witold Baran

jbaran@wileyrein.com

TOPICS

1. Foreign national rules
2. Corporate political activity rules
3. The 2010 Disclose Act confusion
4. Recent developments

FOREIGN NATIONAL BAN

FOREIGN NATIONALS MAY NOT DIRECTLY OR INDIRECTLY—

1. Contribute to candidates or political parties
2. Make expenditures to expressly advocate the election or defeat of a political candidate
3. Make donations to outside groups who make contributions or finance express advocacy

WHO IS A FOREIGN NATIONAL?

1. Citizen of a foreign country unless excepted
2. Foreign government or political party
3. Corporation or organization organized under laws of or having its principal place of business in a foreign country

WHO IS NOT A FOREIGN NATIONAL?

1. A U.S. citizen with dual citizenship
2. A citizen of foreign country admitted to U.S. as a lawful permanent resident (“green card” holder)
3. A U.S. citizen living abroad
4. A corporation organized under U.S. laws with its principal place of business in the U.S.

U.S. SUBSIDIARY OF FOREIGN COMPANY

1. Political Action Committee

- Foreign entity may not establish PAC
- U.S. corporation may establish PAC

2. State & local political contributions

- U.S. subsidiary may contribute corporate money where permitted by state law and using U.S. generated funds

3. Issue advocacy

- May finance issue ads

FOREIGN NATIONALS AT U.S. SUBSIDIARY & PARENT

- Foreign nationals may not direct, dictate, control or directly or indirectly participate in the PAC or the PAC decision making process
- Foreign nationals may vote and debate whether to have a PAC
- Foreign nationals may approve budget for PAC administrative expenses
- Foreign nationals may not be involved in making any corporate political contributions or expenditures including independent expenditures
- Foreign nationals may not be solicited for PAC

CONTRIBUTIONS OR EXPENDITURES BY CORPORATIONS

Any corporation “whatever” may not make a contribution or expenditure in connection with any election for federal office, i.e., President, Senator, Representative, Delegate or Resident Commissioner to Congress

WHAT IS PROHIBITED?

1. Contribution of corporate funds to federal candidates, political party committees or PACS including leadership PACs.
2. Coordinated expenditures which are treated as in kind contributions

WHAT IS PERMITTED?

1. A PAC: separate segregated fund
2. Partisan communications to stockholders and executive or administrative personnel
3. Site visits/plant tours by candidates
4. Independent expenditures
5. Electioneering communications
6. State and local political contributions and expenditures where permitted by state law

NONE OF ABOVE PERMITTED TO FOREIGN NATIONALS

DISCLOSE ACT 2010

1. Redefined “Foreign National”

- Companies more than 20% owned by foreign national
- Companies with a board majority of whom are foreign nationals
- Companies in which a foreign national has power to direct, dictate or control decision-making process

2. U.S. subsidiaries became foreign nationals

3. Failed to include exceptions

4. Some, but not all, exceptions included in House-passed bill

RECENT DEVELOPMENTS

1. DISCLOSE ACT 2012

- S.2219, Senator Whitehouse *et al.*
- No provisions affecting foreign nationals
- Increased disclosure and disclaimers

2. Bluman v. FEC

- Ban on foreign national contributions and expenditures does not violate the First Amendment
- Summarily affirmed by Supreme Court
- Government may exclude foreign citizens from activities that are part of democratic self-government in the United States