

# Index

## ABB

- Enforcement actions
- FCPA internal investigations, new dynamics, **12:3**

## ABB, LTD.

- Recent activity
- SEC's enforcement of FCPA, **14:7**

## ACCOUNTING AND RECORD-KEEPING PROVISIONS

- General discussion, **1:20**
- Accounting records
  - sample company policies and procedures, **21:32**
- Books and records
  - accuracy of records, **21:21, 21:29 to 21:31, 21:33, 46:13 to 46:16**
  - integrity of records, reports, **21:20**
  - record retention, **21:24**
  - sample company policies and procedures, **21:20 to 21:22, 21:28 to 21:31, 21:33, 21:34**
- Bribery, **22:7**
- Enforcement
  - criminal, **1:25**
  - Securities and Exchange Commission (SEC) enforcement, **1:23, 1:24**
- Falsification of books and records, **21:23**
- FCPA violation elements, **1:21**
- Internal accounting controls
  - sample company policies and procedures, **21:25 to 21:27**
  - Securities and Exchange Commission (SEC) enforcement, **46:13 to 46:16**
- Jurisdiction, **1:22**
- Misuse of assets or services, **21:21**
- Non-prosecution agreements
  - Securities and Exchange Commission (SEC), **1:24**
- Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices (Feb. 23, 1979), **App. 26-C**
- Record-keeping
  - FCPA violation elements, **1:21**
  - jurisdiction, **1:22**
  - Securities and Exchange Commission (SEC), **1:23**
- Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**
- Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities

## ACCOUNTING AND RECORD-KEEPING

### PROVISIONS—Cont'd

- Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**
- Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**
- Retention of records, **21:24**
- Sample company accounting and record-keeping policies and procedures, **21:20, 21:29 to 21:34**
- Sample company policies and procedures
  - books and records, **21:20 to 21:24, 21:28 to 21:34**
  - internal accounting controls, **21:25 to 21:27**
  - misuse of assets or services, **21:21**
- Sample FCPA Compliance Program, **22:7**
- Securities and Exchange Commission (SEC)
  - FCPA, passage, **46:13 to 46:16**
  - Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices (Feb. 23, 1979), **App. 26-C**
  - Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**
  - Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**
  - Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**
  - SEC Notification of Enactment of Foreign Corrupt Practices Act of 1977 (Feb. 23, 1978), **App. 26-A**
  - SEC Opinion of Special Counsel (May 16, 1978), **App. 26-B**
  - SEC Report of Management's Responsibilities (July 26, 1988), **App. 26-G**
  - SEC Staff Accounting Bulletin No. 99 - Materiality (August 1999), **App. 26-I**
  - Speech by SEC Chairman Williams on FCPA Accounting Provisions (Jan. 13, 1981) before AICPA Annual Conference, **App. 26-E**
  - Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**

## ACCOUNTING AND RECORD-KEEPING

### PROVISIONS—Cont'd

- Securities and Exchange Commission (SEC)—Cont'd
  - Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**
  - “The Importance of High Quality Accounting Standards,” Remarks by Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, before the Inter-American Development Bank, Washington D.C., September 29, 1997, **App. 26-H**
- Speech by SEC Chairman Williams on FCPA Accounting Provisions (Jan. 13, 1981) before AICPA Annual Conference, **App. 26-E**
- Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**
- Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**
- “The Importance of High Quality Accounting Standards,” Remarks by Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, before the Inter-American Development Bank, Washington D.C., September 29, 1997, **App. 26-H**

## ACCOUNTING ISSUES

- Distinguishing features
  - FCPA internal investigations, new dynamics, **12:17**

## ACCOUNTING PROVISIONS

- Investment transaction, **5:8**
- Persons subject to accounting provisions, **5:10**
- Record-keeping and internal control provisions, **5:9**

## ACTIONS

- Antibribery
  - private cause of action, **15:12**
- Case summaries, **47:1**
- Enforcement actions, cases, **47:1**
- Private causes of action, sanctions against bribery, **15:12**

## AFFIRMATIVE DEFENSES

- Bribery
  - antibribery provisions of the FCPA, **15:8**
  - FCPA violation elements, **1:16**
  - permissible payments, **15:6**
- FCPA Violation Elements, **1:16**

## AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION

- Internationalized standards, **11:39**

## AGENTS AND AGENCY

- Compensation, **22:11**
- Compliance, **4:7**
- FCPA Compliance, **4:7**

## AGENTS AND AGENCY—Cont'd

- Retention, **22:11**
- Sample company bribery policies and procedures, **21:6**
- Sample FCPA compliance program
  - commercial representatives/agents, **22:11, App. 22-A**
  - compensation, **22:11**
  - retention, **22:11**
  - sample language for inclusion in international sales, marketing, agency and distribution agreements, and sample distribution agreement, **App. 22-B**
  - selection, **22:11, App. 22-A**
- Sample language for inclusion in international sales, marketing, agency and distribution agreements, and sample distribution agreement, **App. 22-B**
- Selection, **22:11, App. 22-A**

## AGGRESSIVE ENFORCEMENT CLIMATE

- Perennial issues, **11:26**

## ALBEMARLE CORP.,

- Securities and Exchange Commission (SEC) enforcement, **46:16**

## ALBEMARLE CORPORATION

- Securities and Exchange Commission (SEC) enforcement, **46:15**

## AMADOU KANE DIALLO

- False pretenses, **46:11**
- False representations, **46:11**
- Indictment, **46:11**

## AMERICAN BANK NOTE HOLOGRAPHICS, INC.

- Recent activity
  - SEC's enforcement of FCPA, **14:12**

## AMERICAN RICE

- Recent activity
  - SEC's enforcement of FCPA, **14:6**

## ANTIBRIBERY PROVISIONS

- Bribery
  - general discussion, **4:3, 15:1, 15:2**
  - affirmative defenses, **15:6, 15:8**
  - basic prohibitions, **15:4**
  - enforcement, **15:3**
  - facilitating payments, **15:7**
  - permissible payments and affirmative defenses, **15:6**
  - sample FCPA compliance program, **22:5 to 22:7**
  - sanctions, **15:9 to 15:13**
  - third-party payments, **15:5**
- Compliance, **4:3**
- Elements of a violation, **5:3**
- International distribution and commercial representative agreements, **22A:2**
- Third parties, **15:5**

## **ANTICORRUPTION AGREEMENTS AND CONVENTIONS**

- Council of Europe Conventions
  - Council of Europe Criminal Law Convention on Corruption, Convention penale sur la corruption, **App. 17-G**
  - Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, **App. 17-H**
- Guidelines for Procurement under IBRD Loans and IDA Credits, **App. 17-D**
- ICC (International Chamber of Commerce)
  - ICC (International Chamber of Commerce) Press Release and Rules of Conduct to Combat Extortion and Bribery, **App. 17-E**
- OAS (Organization of American States)
  - OAS (Organization of American States) Inter-American Convention against Corruption, **App. 17-A**
- OECD (Organization for Economic Co-Operation and Development)** (this index)
- United Nations
  - U.N. (United Nations) Convention against Corruption, **App. 17-C**
  - U.N. (United Nations) Declaration against Corruption and Bribery in International Commercial Transactions, **App. 17-C**

## **ARCHIVED MATERIAL**

- Case law, **App. I, App. J**

## **ASSESSING RISK**

- Auditors' duty to detect fraud, **10:29**

## **AUDITORS' DUTY TO DETECT FRAUD**

- Related considerations, **10:26**

## **AUTHORITY AND NATURE OF INVESTIGATIONS**

- SEC's enforcement of FCPA, **14:2**

## **AVOIDING FCPA VIOLATIONS**

- Compliance programs, **5:40**
- Fcpa investment transaction, **5:39**
- Transaction-specific measures, **5:41**
  - contractual provisions, **5:49**
    - accounting and auditing, **5:53**
    - antibribery covenants, **5:51**
    - financial and payment terms, **5:52**
    - indemnification, **5:55**
    - management rights and structure, **5:56**
    - representations and warranties, **5:50**
    - termination, **5:54**
  - due diligence, **5:42**
    - business justification, **5:48**
    - country conditions, **5:46**
    - local laws, **5:47**
    - proposed partner or acquiree, **5:43**
    - proposed partner's official position, **5:44**
    - reasonable valuation/compensation and "comparables," **5:45**

## **BAKER HUGHES**

- Recent activity
  - SEC's enforcement of FCPA, **14:11**

## **BELLSOUTH CORPORATION**

- Recent activity
  - SEC's enforcement of FCPA, **14:9**

## **BOOKS AND RECORDS**

- Accounts and Record-Keeping Provisions** (this index)
- Perennial issues, **11:15**

## **BRIBERY**

- Accounting requirements, **22:7**
- Affirmative defenses
  - antibribery provisions of the FCPA, **15:6, 15:8**
  - FCPA violation elements, **1:16**
  - permissible payments, **15:6**
- Antibribery provisions of the FCPA
  - general discussion, **4:3, 15:1, 15:2**
  - affirmative defenses, **15:6, 15:8**
  - basic prohibitions, **15:4**
  - enforcement, **15:3**
  - facilitating payments, **15:7**
  - permissible payments, **15:6**
  - sample FCPA compliance program, **22:5 to 22:7**
  - sanctions, **15:9 to 15:13**
  - third-party payments, **15:5**
- Business with foreign governments, **21:17**
- Compliance, **21:3**
- Dealing with foreign officials, **21:13**
- Deferred prosecution agreements, Department of Justice (DOJ), **1:18**
- Department of Justice (DOJ) enforcement, **1:17, 1:18**
- Efforts to curb, international, **1:39**
- 18 U.S.C.A. § 201. Domestic Bribery Statute, above
- Enforcement
  - antibribery provisions of the FCPA, **15:3**
  - deferred prosecution agreements, **1:18**
- Department of Justice (DOJ)
  - General discussion, **1:17**
  - deferred prosecution agreements, **1:18**
- Securities and Exchange Commission (SEC), **1:19**
- Exceptions
  - facilitating payments, **1:15**
- Facilitating payments
  - antibribery provisions of the FCPA, **1:15, 15:7**
  - sample company bribery policies and procedures, **21:15**
- FCPA violation elements
  - general discussion, **1:2 to 1:10**
  - affirmative defenses, **1:16**
  - exception, facilitating payments, **1:15**
  - facilitating payments exception, **1:15**
  - false pretenses, **46:11**
  - false representations, **46:11**

## **BRIBERY—Cont'd**

FCPA violation elements—Cont'd  
 foreign officials, **1:4 to 1:10, 1:5 to 1:10**  
 government officials, **46:14, 46:16**  
 high ranking government officials, **46:12**  
 instrumentality, interstate, **1:13**  
 intent, **1:11**  
 interstate instrumentality, **1:13**  
 jurisdiction, **1:3**  
 knowledge, **1:12**  
 obtain and retain chemical catalyst business, **46:16**  
 obtain business, **1:14**  
 public-sector oil refineries, **46:15**  
 retain business, **1:14**  
 structure tender requirements, **46:16**  
 Foreign activities, **21:10 to 21:12**  
 Foreign Corrupt Practices Act  
     Sample company bribery policies and procedures, **21:8, 21:14**  
 Foreign officials, **1:4 to 1:10, 1:5 to 1:10**  
 Foreign representatives, agents, and consultants, **21:6**  
 Gifts, **21:11**  
 Illegal or unethical payments, gifts, bribes, or gratuities, **21:18**  
 Improper influence, **21:1**  
 Improper payments, **21:16**  
 Instrumentality, interstate, **1:13**  
 Intent, **1:11**  
 International Anti-Bribery Act of 1988, **App. D**  
 International Anti-Bribery and Fair Competition Act of 1998, **22:8 to 22:10**  
 International business, **21:7**  
 International efforts to curb, **1:39**  
 Interstate instrumentality, **1:13**  
 Jurisdiction, **1:3**  
 Justice Department (DOJ) enforcement, **1:17, 1:18**  
 Payments  
     facilitating payments, **1:15, 15:7, 21:15**  
     illegal or unethical payments, gifts, bribes, or gratuities, **21:18**  
     improper payments, **21:16**  
     permissible payments, **15:6**  
     sample bribery provisions, **21:5, 21:12, 21:19**  
     third-party payments, **15:5**  
 Penalties, **22:6**  
 Permissible payments, **15:6**  
 Public-sector oil refineries, **46:15**  
 Sample company bribery policies and procedures  
     bribery of government officials is forbidden, **21:4**  
     business courtesies offered to foreign government employees, officials, and representatives, **21:2**  
     business with foreign governments, **21:17**  
     compliance with other laws, **21:3**  
     dealing with foreign officials, **21:13**  
     facilitating payments, **21:15**  
     foreign activities, **21:10 to 21:12**

## **BRIBERY—Cont'd**

Sample company bribery policies and procedures—Cont'd  
 Foreign Corrupt Practices Act, **21:8, 21:14**  
 foreign representatives, agents, and consultants, **21:6**  
 illegal or unethical payments, gifts, bribes, or gratuities, **21:18**  
 improper influence, **21:1**  
 improper payments, **21:16**  
 international business, **21:7**  
 payments to foreign government officials, **21:19**  
 payments to government employees, **21:5**  
 U.S. Foreign Corrupt Practices Acts, **21:9**  
 Sample FCPA compliance program, **22:5 to 22:7**  
 Sanctions  
     general discussion, **22:6**  
     civil, **15:10**  
     criminal, **15:9**  
     governmental guidance, **15:13**  
     other governmental action, **15:11**  
     private cause of action, **15:12**  
 Securities and Exchange Commission (SEC) enforcement, **1:19**  
 Third-party payments, **15:5**  
 U.S. Foreign Corrupt Practices Acts, **21:9**

## **BRIBERY ABROAD- STAY OUT OF JAIL: THE US ANTIBRIBERY REGULATIONS**

Counseling against corruption  
     introduction, compliance programs, **9:10**  
     legal underpinnings, **9:11**  
     steps, designing a program, **9:12**  
 Foreign corrupt practices act: the idea and the reality  
     generally, **9:1**  
     history and elements, the FCPA, **9:2**  
         affirmative defenses, **9:6**  
         antibribery provisions, **9:4**  
         exceptions: grease payments, **9:5**  
         record-keeping provisions, **9:3**  
 Global response to corruption, international business transactions  
     generally, **9:7**  
     other international efforts against bribery, **9:9**  
     perception of bribery, Transparency International Index, **9:8**

## **BRIEF SUMMARY OF DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

Enforcement, **App. 1-A**

## **BROAD REACH**

Internal accounting controls, **10:15**

## **BUSINESS WITH GOVERNMENT OFFICIALS OR FAMILY MEMBER**

High-risk transactions, **11:32**



## CASE SUMMARIES

Directors and officers

Illustrative cases, **1:36**

Enforcement

general discussion, **27:1 et seq.**

Matter of GOL Linhas Aereas Inteligentes S.A.,  
2022 enforcement actions/cases, **45:20**

2006 enforcement actions/cases, **29:1 to 29:26 (CD-ROM)**

2007 enforcement actions/cases, **30:1 to 30:127 (CD-ROM)**

2008 enforcement actions/cases, **31:1 to 31:127 (CD-ROM)**

2009 enforcement actions/cases, **32:1 to 32:125 (CD-ROM)**

2010 enforcement actions/cases, **33:1 to 33:108 (CD-ROM)**

2011 enforcement actions/cases, **34:1 to 34:85**

2012 enforcement actions/cases, **35:1 to 35:54**

2013 enforcement actions/cases, **36:1 to 36:63**

2014 enforcement actions/cases, **37:1 to 37:53**

2015 enforcement actions/cases, **38:1 to 38:51**

2016 enforcement actions/cases, **39:1 to 39:43**

2017 enforcement actions/cases, **40:1 to 40:26**

2018 enforcement actions/cases, **41:1 et seq.**

2019 enforcement actions/cases, **42:1 et seq.**

2020 enforcement actions/cases, **43:1 et seq.**

2021 enforcement actions/cases, **44:1 et seq.**

Foreign Corrupt Practices Act, **28:1 to 28:36**

Liability, **1:36**

2006 enforcement actions/cases, **29:1 to 29:26 (CD-ROM)**

2007 enforcement actions/cases, **30:1 to 30:127 (CD-ROM)**

2008 enforcement actions/cases, **31:1 to 31:127 (CD-ROM)**

2009 enforcement actions/cases, **32:1 to 32:125 (CD-ROM)**

2010 enforcement actions/cases, **33:1 to 33:108 (CD-ROM)**

2011 enforcement actions/cases, **34:1 to 34:85**

2012 enforcement actions/cases, **35:1 to 35:54**

2013 enforcement actions/cases, **36:1 to 36:63**

2014 enforcement actions/cases, **37:1 to 37:53**

2015 enforcement actions/cases, **38:1 to 38:51**

2016 enforcement actions/cases, **39:1 to 39:43**

2017 enforcement actions/cases, **40:1 to 40:26**

2018 enforcement actions/cases, **41:1 et seq.**

2019 enforcement actions/cases, **42:1 et seq.**

2020 enforcement actions/cases, **43:1 to 43:41**

2021 enforcement actions/cases, **44:1 to 44:27**

2022 enforcement actions/cases, **45:1 to 45:30**

## CASES AND ENFORCEMENT ACTIONS

Case summaries

generally, **28:1 to 28:36**

## CASES AND ENFORCEMENT ACTIONS—Cont'd

Case summaries—Cont'd

Foundation of shareholders committee of former

Saybolt International v. Schreiber, **28:1, 28:20**  
application to case, **28:31**

as and for first cause of action for legal malpractice, **28:13**

as and for second cause of action for breach of a  
lawyers fiduciary duty, **28:14**

as and for third cause of action for breach of  
contract, **28:15**

bribe, **28:21**

collateral estoppel doctrine of privity, **28:30**

Conclusion, **28:28**

Continuous representation and tolling agreement,  
**28:6**

conviction of Mead, **28:29**

corruptly element, **28:27**

criminal proceedings, **28:22**

criminal proceedings against Saybolt and  
Schreibers obtaining immunity, **28:10**

Defendants Philippe S.E. Schreiber and Walter,  
Conston, Alexander & Green, P.C, **28:4**

Discussion, standard of review, **28:24**

elements of crime, **28:26**

escrow and assignment of the claims, **28:7**

Facts and allegations relevant to all causes of  
action, **28:7**

Freuler v. Parker, **28:33**

guilty plea, **28:25**

Jurisdiction and venue, **28:2**

malpractice suit, **28:23**

Nature of action, **28:5**

parties, plaintiff Dutch entity, **28:3**

prosecution and testifying against clients, **28:10**

Saybolt Companies, **28:8**

Schreibers admitted lack of knowledge about  
FCPA, **28:12**

Schreibers erroneous and incomplete legal advice,  
**28:11**

Schreibers retention as counsel to Saybolt, **28:9**

Strong v. Taylor, **28:34**

United States v. Asem L. Elgawhary, **28:36**

United States v. Cilins, obstruction, **28:35**

United States of America v. UNC/Lear Services,  
Inc., **28:16**

Parties, **28:17**

Recitals, **28:18**

Terms of agreement, **28:19**

## CHARITABLE DONATIONS UNDER FCPA

Conclusion, **13:4**

Discussion, domestic bribery statute v. FCPA, **13:2**

Generalized goodwill, payment under, **13:3**

Introduction, **13:1**

## CHECKLISTS

Internal investigations, issues to be considered, **App. 12-A**

## CHIQUITA BRANDS

Recent activity  
SEC's enforcement of FCPA, **14:10**

## CIVIL SANCTIONS

Sanctions, **15:10**

## CLEAR CHANNEL OUTDOOR HOLDINGS INC.

Securities and Exchange Commission (SEC) enforcement, **46:14**

## CLIENT

Distinguishing features  
FCPA internal investigations, new dynamics, **12:25**

## COMMERCIAL REPRESENTATIVES/AGENTS

Sample FCPA compliance program, **22:11, App. 22-A**

## COMMISSIONS

**Fees and Commissions** (this index)

## COMPAA02090205AS Y PERSONAS NO ESTADOUNIDENSES Y LA FCPA

Spanish-language overview  
author's note, **19:1**  
translated table of contents, **19:2**

## COMPENSATION

Agents and agency, **22:11**  
Representatives, foreign, **22:11**  
Sample FCPA compliance program, **22:11**

## COMPETITION

**Foreign Competition** (this index)

## COMPLIANCE

General discussion, **4:1 to 4:12**  
Agents, **4:7**  
Antibribery, international distribution and commercial representative agreements, **22A:2**  
Antibribery provisions, **4:3**  
Assignment of responsibility, **1:28**  
Bribery, **21:3**  
Business associates, **4:7**  
Business partners, **4:7**  
Certification, periodic, **23:17**  
Compliance certification, **App. 23-C**  
Compliance culture, **1:27**  
Compliance questionnaire, **App. 23-A**  
Contracts, **1:31, 23:15**  
Covenants, **1:31**  
Defenses, **4:4**  
Detection, FCPA problems, **1:26**  
Dodd-Frank Wall Street Reform and Consumer Protection Act, **1:34**  
Due diligence investigations, **1:29, 1:30**  
Enforcement, **4:5**

## COMPLIANCE—Cont'd

Exceptions, **4:4**  
Foreign Corrupt Practices Act, **1:26, 1:34**  
Governing law  
    general discussion, **22:4**  
    FCPA bribery prohibitions, **22:5 to 22:7**  
    International Anti-Bribery and Fair Competition Act of 1998, **22:8 to 22:10**  
Red flags, **23:16**  
Reporting violations, communication lines for, **23:18**  
Representations and warranties, **1:32**  
Responsibility, assignment of, **1:28**  
Sample company bribery policies and procedures, **21:3**  
Sample compliance program  
    compensation, **22:11**  
    foreign commercial representatives/agents, **22:11, App. 22-A**  
    organization, **22:2**  
    purpose, **22:1**  
    retention, **22:11**  
    sample language for inclusion in international sales, marketing, agency and distribution agreements, and sample distribution agreement, **App. 22-B**  
    selection of foreign commercial representatives/agents, **22:11**  
    standards for conduct, **22:3 to 22:10**  
Sample compliance provisions for contract with representatives, **App. 23-B**  
Sarbanes-Oxley Act of 2002, **1:33**  
Suspicious activities, reporting of, **23:18**  
Training, **23:19**  
Written procedures  
    general discussion, **23:2**  
    appointment approval, **23:14**  
    candidate evaluation, **23:9 to 23:11**  
    candidate identification, **23:3**  
    due diligence, **23:2**  
    due diligence report, **23:13**  
    information collection, **23:5 to 23:8**  
    qualification identification, **23:4**  
    review of local laws, **23:12**

## COMPLIANCE AND DISCLOSURE ISSUES

Distinguishing features  
FCPA internal investigations, new dynamics, **12:28**

## CONCLUSION

Disclosure requirements under FCPA, **6:9**  
Domestic bribery statute interpret the FCPA, **8:9**

## CONCLUSIONS AND RECOMMENDATIONS

Fcpa investment transaction, **5:58**

## CONSPIRACY

United States v. Corporacion Financiera Colombiana SA, **46:12**

## CONTRACTS

Compliance, **1:31, 23:15**

## **CONTRACTS—Cont’d**

- Covenants, **1:31**
- Provisions requiring FCPA compliance, **23:15**
- Representations and warranties, **1:32**
- Sample compliance provisions for contract with representatives, **App. 23-B**

## **CONTRACTUAL PROVISIONS**

- Transaction-specific measures
- avoiding FCPA violations, **5:46, 5:49**

## **COOPERATION WITH DEPARTMENT OF JUSTICE**

- SEC’s enforcement of FCPA, **14:3**

## **CORPORACION FINANCIERA COLOMBIANA SA**

- Conspiracy, **46:12**

## **CORPORATE ENFORCEMENT POLICY**

- Deputy Attorney General Rosenstein, remarks, **App. 25A-A**

## **CORRUPT INTENT**

- Taxation, **3:7**

## **COUNCIL OF EUROPE CONVENTION**

- Council of Europe Criminal Law Convention on Corruption, Convention penale sur la corruption, **App. 17-G**
- Developing web, international anticorruption conventions, **5:15**
- Internationalized standards, **11:37**
- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, **App. 17-H**

## **COVENANTS**

- Compliance, **1:31**
- Contracts, **1:31**

## **CRIMINAL ENFORCEMENT**

- Enforcement** (this index)

## **CRIMINAL SANCTIONS**

- Sanctions, **15:9**

## **DEFENSES**

- Affirmative defenses
  - antibribery provisions of the FCPA, **15:8**
  - bribery, **1:16**
  - permissible payments, **15:6**
  - taxation, **3:11**
- Antibribery provisions of the FCPA, **15:8**
- Bribery, **1:16**
- Compliance, **4:4**
- Permissible payments, **15:6**
- Taxation, **3:11**

## **DEFERRED PROSECUTION AGREEMENTS**

- Bribery, Department of Justice (DOJ), **1:18**

## **DEGREE OF CONTROL BY OR BENEFIT**

- Joint venture, company owned or controlled by a government official, **5:28**

## **DEMAND SIDE**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:11**

## **DEPARTMENT OF JUSTICE (DOJ)**

- Generally, **25:1 to 25:5**
- Bribery, **1:17, 1:18**
- Deferred prosecution agreements, **1:18**
- Enforcement
  - general discussion, **1:17**
  - deferred prosecution agreements, **1:18**

## **DETECTION**

- Compliance, **1:26**

## **DIRECT PAYMENTS**

- Taxation, **3:11**

## **DIRECTION AND CONSULTATION**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:20**

## **DIRECTORS AND OFFICERS**

- Case summaries, **1:36**
- Liability
  - general discussion, **1:35**
  - case summaries, **1:36**
  - private right of action, **1:37**
  - statute of limitations, **1:38**
- Private rights of action, **1:37**
- Rights of action, **1:37**
- Statutes of limitations, **1:38**

## **DISCIPLINE AND REMEDIATION ISSUES**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:23**

## **DISCLOSURE ISSUES**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:22**

## **DISCLOSURE OBLIGATIONS**

- Auditors’ duty to detect fraud, **10:30**

## **DISCLOSURE REQUIREMENTS UNDER FCPA**

- Conclusion, **6:9**
- General requirement potentially applicable, **6:3**
  - SEC requirements, **6:5**
  - under New York Stock Exchange Listed Company Manual, **6:6**
  - under securities law, **6:4**
  - under the Sarbanes-Oxley Act, **6:7**
- Generally, **6:1**
- No explicit legal requirement, disclose FCPA violations, **6:2**
- Voluntary disclosure DOJ or SEC, **6:8**

## **DISCUSSION, DOMESTIC BRIBERY STATUTE V. FCPA**

Charitable donations under FCPA, **13:2**

## **DISTINGUISHING FEATURES**

FCPA internal investigations, new dynamics, **12:7**

Impact of corporate governance reforms

FCPA internal investigations, new dynamics, **12:24**

## **DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

Compliance programs, **1:34**

## **DOJ**

Department of Justice (this index)

## **DOJ RELEASES**

Recent cases and opinion releases, 2005, **11:55**

## **DOMESTIC BRIBERY STATUTE INTERPRET THE FCPA**

Conclusion, **8:9**

Generally, **8:1**

Structure of 18 U.S.C.A. 201, **8:2**

“anything of value,” **8:4**

“public official,” **8:3**

required intent, **8:5**

differentiating between 201 (b) and 201 (c), **8:8**

Section 201 (b), bribes, **8:6**

Section 201 (c), illegal gratuities, **8:7**

## **DUE DILIGENCE**

Appointment approval, **23:14**

Candidate evaluation

general discussion, **23:9**

compliance with U.S. laws, **23:11**

qualifications, **23:10**

Candidate identification, **23:3**

Compliance, **1:29, 1:30, 23:11**

Due diligence report, **23:13**

Information collection

general discussion, **23:5**

interviews, **23:7**

miscellaneous sources, **23:8**

questionnaires, **23:6**

Interviews, **23:7**

Investigations, **1:29, 1:30**

Miscellaneous sources, **23:8**

Qualifications, **23:4, 23:10**

Questionnaires, **23:6**

Review of local laws, **23:12**

Transaction-specific measures

avoiding FCPA violations, **5:42**

Written compliance procedures

general discussion, **23:2**

appointment approval, **23:14**

## **DUTY TO RAT**

Distinguishing features

FCPA internal investigations, new dynamics the, **12:27**

## **EFFECTIVE ENFORCEMENT TOOL**

Enforcement, **10:34**

## **ELEMENTS**

Internal accounting controls, **10:10**

US FCPA 2006, **11:3**

## **ENFORCEMENT**

General discussion, **27:1 et seq.**

Accounting and record-keeping provisions

criminal enforcement, **1:25**

enforcement, **27:1 et seq.**

Securities and Exchange Commission (SEC), **1:23, 1:24**

Albemarle Corp., **46:16**

Albemarle Corporation, **46:15**

Antibribery provisions of the FCPA, **15:3**

Bribery

antibribery provisions of the FCPA, **15:3**

Department of Justice (DOJ), **1:17, 1:18**

Securities and Exchange Commission (SEC), **1:19**

Brief Summary of Dodd-Frank Wall Street Reform and Consumer Protection Act, **App. 1-A**

Carl Zaglin, Aldo Marchena, Francisco Cosenza, **46:18**

Case summaries

general discussion, **27:4**

2006 enforcement actions/cases, **29:1 to 29:26 (CD-ROM)**

2007 enforcement actions/cases, **30:1 to 30:127 (CD-ROM)**

2008 enforcement actions/cases, **31:1 to 31:127 (CD-ROM)**

2009 enforcement actions/cases, **32:1 to 32:125 (CD-ROM)**

2010 enforcement actions/cases, **33:1 to 33:108 (CD-ROM)**

2011 enforcement actions/cases, **34:1 to 34:85**

2012 enforcement actions/cases, **35:1 to 35:54**

2013 enforcement actions/cases, **36:1 to 36:63**

2014 enforcement actions/cases, **37:1 to 37:53**

2015 enforcement actions/cases, **38:1 to 38:51**

2016 enforcement actions/cases, **39:1 to 39:43**

2017 enforcement actions/cases, **40:1 to 40:26**

2018 enforcement actions/cases, **41:1 to 41:34**

2019 enforcement actions/cases, **42:1 to 42:58**

2020 enforcement actions/cases, **43:1 et seq.**

2021 enforcement actions/cases, **44:1 et seq.**

2022 enforcement actions/cases, **45:1 et seq.**

2023 enforcement actions/cases, **46:1 to 46:19**

2024 enforcement actions/cases, **47:1 to 47:14**

United States v. Deutsche Bank Aktiengesellschaft, 2021 enforcement actions/cases, **44:1**

Clear Channel Outdoor Holdings Inc., **46:14**



## ENFORCEMENT—Cont'd

Compliance, **4:5**  
 Corporate Compliance Program, **App. B**  
 Corporate Compliance Reporting, **App. C**  
 Corporate enforcement policy, **App. 1-D**  
 Criminal enforcement  
   accounting and record-keeping provisions, **1:25**  
   record-keeping, **1:25**  
 Department of Justice (DOJ), **1:17, 1:18**  
 Executive Legal Summaries, **App. 1-B**  
 FCPA 1977 Amendments & Related Materials, **App. B**  
 FCPA 1988 Amendments & Related Materials, **App. C**  
 Foreign Corrupt Practices Act  
   compliance, **4:5**  
   FCPA 1977 Amendments & Related Materials, **App. B**  
   FCPA 1988 Amendments & Related Materials, **App. C**  
   Foreign Corrupt Practices Act, **App. A**  
   Reporter Enforcement Actions, **App. H**  
 Foreign implementing legislation, **App. E**  
 Frauds Section's Foreign Corrupt Practices Enforcement Plan and Guidance, **App. 1-C**  
 Freepoint Commodities LLC, **46:19**  
 Guidelines, Investigations and enforcement of the foreign corrupt practices act, **App. 1-E**  
 H.W. Wood Limited, **46:17**  
 International Anti-Bribery Act of 1988 and Related Materials, **App. D**  
 Justice Department (DOJ), **1:17, 1:18**  
 3M Company, **46:13**  
 Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices (Feb. 23, 1979), **App. 26-C**  
 Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**  
 Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**  
 Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**  
 SAP SE, **47:1**  
 SEC v. Coburn, 2025, **48:1**  
 Securities and Exchange Commission (SEC)  
   accounting and record-keeping provisions, **1:23, 1:24**  
   Albemarle Corp., **46:16**  
   Albemarle Corporation, **46:15**  
   bribery, **1:19**

## ENFORCEMENT—Cont'd

Securities and Exchange Commission (SEC)—Cont'd  
   Carl Zaglin, Aldo Marchena, Francisco Cosenza, **46:18**  
   Clear Channel Outdoor Holdings Inc., **46:14**  
   Freepoint Commodities LLC, **46:19**  
   H.W. Wood Limited, **46:17**  
   3M Company, **46:13**  
   Non-prosecution agreements, **1:24**  
   Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices (Feb. 23, 1979), **App. 26-C**  
   record-keeping, **1:23**  
   Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**  
   Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**  
   Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**  
   SEC Notification of Enactment of Foreign Corrupt Practices Act of 1977 (Feb. 23, 1978), **App. 26-A**  
   SEC Opinion of Special Counsel (May 16, 1978), **App. 26-B**  
   SEC Report of Management's Responsibilities (July 26, 1988), **App. 26-G**  
   SEC Staff Accounting Bulletin No. 99 - Materiality (August 1999), **App. 26-I**  
   Speech by SEC Chairman Williams on FCPA Accounting Provisions (Jan. 13, 1981) before AICPA Annual Conference, **App. 26-E**  
   Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**  
   Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**  
   “The Importance of High Quality Accounting Standards,” Remarks by Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, before the Inter-American Development Bank, Washington D.C., September 29, 1997, **App. 26-H**  
   Tysers Insurance Brokers Limited, **46:17**  
   Speech by SEC Chairman Williams on FCPA Accounting Provisions (Jan. 13, 1981) before AICPA Annual Conference, **App. 26-E**  
   Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**

## **ENFORCEMENT—Cont’d**

Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**

Statement of Facts, **App. A**

“The Importance of High Quality Accounting Standards,” Remarks by Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, before the Inter-American Development Bank, Washington D.C., September 29, 1997, **App. 26-H**

Tysers Insurance Brokers Limited, **46:17**

United States v. Amadou Kane Diallo, **46:11**

United States v. Corporacion Financiera Colombiana SA, **46:12**

United States v. Glenn Oztemel, 2025, **48:2**

US FCPA 2006, **11:6**

Whistleblower Protection Provisions of the Dodd-Frank Act, **App. F**

## **ENFORCEMENT ACTIONS**

FCPA internal investigations, new dynamics, **12:2**

## **EXCEPTIONS**

Bribery

facilitating payments, **1:15**

Compliance, **4:4**

Facilitating payments, **1:15**

Foreign Corrupt Practices Act

compliance, **4:4**

violation elements, **1:15**

Grease payments, **3:10**

Taxation, **3:10**

## **EXCEPTIONS AND AFFIRMATIVE DEFENCES**

Affirmative defenses, **5:6**

Exceptions, **5:5**

## **EXCEPTIONS AND AFFIRMATIVE DEFENSES**

US FCPA 2006, **11:4**

## **EXECUTIVE LEGAL SUMMARIES**

Enforcement, **App. 1-B**

## **FACILITATING PAYMENTS**

Bribery

antibribery provisions of the FCPA, **15:7**

exceptions, **1:15**

sample company bribery policies and procedures, **21:15**

Foreign Corrupt Practices Act

violation elements, **1:15**

Payments

general discussion, **1:15, 15:7**

bribery, **1:15, 15:7, 21:15**

sample company bribery policies and procedures, **21:15**

Perennial issue, **11:14**

Record-keeping provisions, **10:7**

## **FALSIFICATION OF BOOKS AND RECORDS**

Record-keeping provisions, **10:6**

## **FCPA CORPORATE ENFORCEMENT POLICY**

Generally, **25A:1-25:4**

Akamai Technologies, **25A:3**

Corporate Enforcement Policy, **App.25A-B**

Declination Letter, **25A:2**

Johnson Controls, **25A:4**

## **FCPA INTERNAL INVESTIGATIONS, NEW DYNAMICS**

Checklist for issues to be considered, **App 12-A**

Conclusion, **12:30**

Distinguishing features, **12:7**

accounting issues, **12:17**

demand side, **12:11**

direction and consultation, **12:20**

discipline and remediation issues, **12:23**

foreign evidence gathering, **12:14**

foreign subsidiaries, **12:10**

impact of corporate governance reforms, **12:24**

client, **12:25**

compliance and disclosure issues, **12:28**

duty to “rat,” **12:27**

investigator, selection, **12:26**

other, **12:29**

intermediaries, **12:12**

launching investigation, **12:9**

local and third-party law issues, **12:15**

local political, business, and security situations, **12:16**

local proceedings, **12:19**

making adjustments, **12:21**

privilege, **12:13**

public relations, **12:18**

whether to investigate, **12:8**

Enforcement actions, **12:2**

ABB, **12:3**

Lockheed, **12:4**

other contexts, **12:6**

teleglobe, **12:5**

Introduction, **12:1**

## **FCPA INVESTMENT TRANSACTION**

Avoiding FCPA violations, **5:39**

compliance programs, **5:40**

monitoring performance, **5:57**

transaction-specific measures, **5:41**

Conclusions and recommendations, **5:58**

Developing web, international anticorruption conventions, **5:12**

Council of Europe Conventions, **5:15**

international financial institutions, **5:18**

OAS convention, **5:13**

OECD convention, **5:14**

other regional conventions, **5:16**

## **FCPA INVESTMENT TRANSACTION—Cont'd**

- Developing web, international anticorruption conventions, **5:12**—Cont'd
  - U.N. Conventions, **5:17**
- Introduction, **5:1**
- Investment transaction
  - accounting provisions, **5:8**
    - persons subject to accounting provisions, **5:10**
  - record-keeping and internal control provisions, **5:9**
  - antibribery provisions, elements of a violation, **5:3**
    - affirmative defenses, **5:6**
    - exceptions, **5:5**
    - official guidance, **5:7**
    - person subject, **5:4**
  - other relevant laws, **5:11**
- Other general FCPA issues, **5:33**
  - lobbying and influencing legislation, **5:38**
  - social benefits, **5:37**
  - valuation/compensation issues, **5:34**
    - consideration paid, foreign partners, **5:35**
    - director and officer compensation, **5:36**
- Overview, **5:2**
- Specific investment scenarios and issues, **5:19**
  - joint venture, company owned or controlled by a government official, **5:26**
  - joint venture, foreign government, **5:30**
  - private joint ventures or mergers/acquisitions, **5:20**
    - foreign joint venture or affiliate, **5:24**
    - subsequent changes in ownership, **5:25**
  - threshold issues, **5:21**

## **FEDERAL SENTENCING GUIDELINES**

- Compliance obligations, **11:56**

## **FIGHTING GLOBAL CORRUPTION: BUSINESS RISK MANAGEMENT INFORMATION**

- Accountability
  - good governance for businesses and governments, **16:4**
- Africa
  - regional corruption focus, **16:10**
- Americas
  - regional corruption focus, **16:11**
- Anticorruption strategy
  - detection and prevention, **16:2**
- Asia-Pacific
  - regional corruption focus, **16:12**
- Business-government dialogue
  - recognize and make anticorruption issues, **16:5**
- Corporate compliance program
  - effective elements, **16:3**
- Corruption
  - reporting mechanisms, **16:24**
  - why it matters, **16:1**
- Corruption and good governance
  - road ahead, **16:23**

## **FIGHTING GLOBAL CORRUPTION: BUSINESS RISK MANAGEMENT INFORMATION—Cont'd**

- Detection and prevention
  - anticorruption strategy, **16:2**
- Effective elements
  - corporate compliance program, **16:3**
- Europe
  - regional corruption focus, **16:13**
- Global corruption resources, **App. A-16**
- Globally
  - to emerge, anticorruption environment, **16:9**
- Governance
  - accountability and good governance, **16:4**
- International anticorruption policy
  - U.S. key goals, **16:8**
- International organizations
  - Anti-Corruption Conference and Transparency International, **16:20**
  - Global Corporate Governance Forum, **16:21**
  - Global Forum on Fighting Corruption, **16:16**
  - International Chamber of Commerce, **16:18**
  - international financial institutions, **16:17**
  - United Nations, **16:15**
  - World Customs Organization, **16:19**
  - World Trade Organization, **16:14**
- Regional corruption focus
  - Africa, **16:10**
  - Americas, **16:11**
  - Asia-Pacific, **16:12**
  - Europe, **16:13**
- Reporting mechanisms
  - corruption, **16:24**
- Road ahead
  - corruption and good governance, **16:23**
- Role of civil society, **16:22**
- Transitional economies
  - promote good practices, **16:6**
- U.S. efforts
  - combat global corruption, **16:7**
- U.S. key goals
  - international anticorruption policy, **16:8**
- Why it matters
  - corruption, **16:1**

## **FOREIGN COMMERCIAL REPRESENTATIVES/AGENTS**

- Sample FCPA compliance program, **22:11, App. 22-A**

## **FOREIGN CORRUPT PRACTICES ACT**

- Guidance
  - General discussion, **24:1**
  - History, **24:2**
  - resource guide to the U.S. Foreign Corrupt Practices Act, **App. 24-A**
  - Scope, **24:3**

## **FOREIGN EVIDENCE GATHERING**

Distinguishing features

FCPA internal investigations, new dynamics, **12:14**

## **FOREIGN GOVERNMENTS**

Sample company bribery policies and procedures, **21:17**

## **FOREIGN JOINT VENTURE OR AFFILIATE**

Specific investment scenarios and issues

private joint ventures or mergers/acquisitions, **5:24**

## **FOREIGN OFFICIALS**

Bribery

general discussion, **1:4 to 1:10**

clerical position, temporary consulate employee in, **1:8**

consulate employee in clerical position, temporary, **1:8**

consulting arrangement with parastatal's general director, **1:7**

FCPA violation elements, **1:4 to 1:10, 1:5 to 1:10**

foreign government official on leave from law firm, **1:10**

general director, consulting arrangement with parastatal's, **1:7**

government instrumentality, outside director of, **1:5**  
law firm, foreign government official on leave from, **1:10**

outside director of government instrumentality, **1:5**  
parastatal directors' fees, **1:6**

parliament, members of, **1:9**

temporary consulate employee in clerical position, **1:8**

Clerical position, temporary consulate employee in, **1:8**

Consulate employee in clerical position, temporary, **1:8**

Consulting arrangement with parastatal's general director, **1:7**

Dealing with foreign officials, **21:13**

FCPA violation elements, **1:4 to 1:10, 1:5 to 1:10**

Foreign government official on leave from law firm, **1:10**

General director, consulting arrangement with parastatal's, **1:7**

Government instrumentality, outside director of, **1:5**

Law firm, foreign government official on leave from, **1:10**

Outside director of government instrumentality, **1:5**

Parastatal directors' fees, **1:6**

Parliament, members of, **1:9**

Payments to foreign government officials, **21:19**

Sample company bribery policies and procedures dealing with foreign officials, **21:13**

payments to foreign government officials, **21:19**

Taxation, **3:4, 3:6**

Temporary consulate employee in clerical position, **1:8**

## **FOREIGN PROCUREMENT**

High-risk transactions, **11:33**

## **FOREIGN REPRESENTATIVES, AGENTS, AND CONSULTANTS**

Sample company bribery policies and procedures, **21:6**

## **FOREIGN SUBSIDIARIES**

Distinguishing features

FCPA internal investigations, new dynamics, **12:10**

## **FRAUD**

Enforcement plan and guidance, Frauds Section's

Foreign Corrupt Practices Enforcement Plan and Guidance, **App. 1-C**

## **FUTURE OF SEC ACTIVITY**

SEC's enforcement of FCPA, **14:17**

## **GENERALIZED GOODWILL, PAYMENT**

Under charitable donations under FCPA, **13:3**

## **GIFTS**

Bribery, **21:11**

Sample company bribery policies and procedures, **21:11**

## **GOVERNMENT EMPLOYEES**

Sample company bribery policies and procedures, **21:5**

## **GOVERNMENT OWNERSHIP AND BUSINESS CONTROL, COUNTRIES**

With high-risk transactions, **11:29**

## **GREASE PAYMENTS**

Payments, **3:10**

Taxation, **3:10**

## **GUIDANCE FOR COMPLYING WITH THE FOREIGN CORRUPT PRACTICES ACT**

Compliance program

essential elements, **20:1**

Essential elements

compliance program, **20:1**

## **HIGH-RISK TRANSACTIONS**

**Transactions, High-Risk** (this index)

US FCPA 2006, **11:28**

## **HISTORY AND ELEMENTS, THE FCPA**

Affirmative defenses, **9:6**

Antibribery provisions, **9:4**

Exceptions: grease payments, **9:5**

Foreign corrupt practices act: the idea and the reality, **9:2**

Record-keeping provisions, **9:3**

## **HOSTING AND HOSPITALITY**

Perennial issue, **11:13**

## **IBM**

Recent activity

SEC's enforcement of FCPA, **14:13**

**ICC (INTERNATIONAL CHAMBER OF COMMERCE)**

ICC (International Chamber of Commerce) Press  
Release and Rules of Conduct to Combat Extor-  
tion and Bribery, **App. 17-E**

**IDENTITY OF PARTNER OR ACQUIREE**

Specific investment scenarios and issues  
private joint ventures or mergers/acquisitions  
threshold issues, **5:22**

**ILLEGAL OR UNETHICAL PAYMENTS, GIFTS, BRIBES, OR GRATUITIES**

Bribery, **21:18**  
Payments  
bribery, **21:18**  
sample company bribery policies and procedures,  
**21:18**

**IMPROPER INFLUENCE**

Bribery, **21:1**  
Sample company bribery policies and procedures, **21:1**

**IMPROPER PAYMENTS**

Bribery, **21:16**  
Payments, **21:16**  
Sample company bribery policies and procedures,  
**21:16**

**INDEPENDENT COMPLIANCE MONITORS**

Perennial issues, **11:27**

**INDICTMENT**

United States v. Amadou Kane Diallo, **46:11**

**INDIRECT PAYMENTS**

Taxation, **3:11**

**INFLUENCE**

Sample company bribery policies and procedures, **21:1**  
Taxation, **3:8**

**INTENT**

Bribery, **1:11**  
Corrupt intent, **3:7**  
Taxation, **3:7**

**INTERMEDIARIES**

Distinguishing features  
FCPA internal investigations, new dynamics, **12:12**

**INTERNAL ACCOUNTING CONTROLS**

Foreign Corrupt Practices Act, **21:26**  
Internal control guidelines, **21:27**  
Sample company accounting and record-keeping poli-  
cies and procedures  
general discussion, **21:25**  
Foreign Corrupt Practices Act, **21:26**  
internal control guidelines, **21:27**  
Sample company policies and procedures  
general discussion, **21:25**  
Foreign Corrupt Practices Act, **21:26**

**INTERNAL ACCOUNTING CONTROLS—Cont'd**

Sample company policies and procedures—Cont'd  
internal control guidelines, **21:27**

**INTERNAL CONTROLS**

Guidelines  
internal accounting controls, **21:27**  
sample company accounting and record-keeping  
policies and procedures, **21:27**

**INTERNAL INVESTIGATIONS**

Checklist of issues to be considered, **App. 12-A**

**INTERNAL REVENUE CODE**

FCPA compliance, **3:2**  
Internal Revenue Code § 162 (c), **3:2**

**INTERNATIONAL ANTI-BRIBERY ACT OF 1988**

Bribery, **App. D**  
Enforcement, **App. D**

**INTERNATIONAL ANTI-BRIBERY AND FAIR COMPETITION ACT OF 1998**

Bribery, **22:8 to 22:10**  
Penalties, **22:10**  
Sample FCPA compliance program  
penalties, **22:10**  
sanctions, **22:10**  
scope, **22:9**  
standards for conduct, **22:8 to 22:10**  
Sanctions, **22:10**  
Scope, **22:9**

**INTERNATIONAL ANTICORRUPTION CONVENTIONS**

**Anticorruption Conventions** (this index)  
Developing web, Fcpa investment transaction, **5:12**

**INTERNATIONAL CHAMBER OF COMMERCE (ICC)**

ICC (International Chamber of Commerce) Press  
Release and Rules of Conduct to Combat Extor-  
tion and Bribery, **App. 17-E**

**INTERNATIONAL DISTRIBUTION AND COMMERCIAL REPRESENTATIVE AGREEMENTS**

Generally, **22A:1 to 22A:4**  
Anti-bribery compliance, **22A:2**  
Ethical standards, **22A:3**  
Government officials, **22A:4**

**INTERNATIONAL EFFORTS TO CURB BRIBERY AND CORRUPTION**

Council recommendation on Bribery, **App. H-17**  
Criminal law convention  
Europe council, **17:7**  
Europe council  
criminal law convention, **17:7, App. G-17**  
IBRD loans and IDA credits  
procurement guidelines, **App. D-17**



## **INTERNATIONAL EFFORTS TO CURB BRIBERY AND CORRUPTION—Cont'd**

- ICC
  - press release and rules of conduct, **App. E-17**
  - rules of conduct, **17:6**
- Implementation report
  - OECD recommendation, **App. B-17**
- OAS convention, **App. A-17**
- OAS corruption convention, **17:2**
- OECD convention, **17:3**
- OECD Convention, **App. F-17**
- OECD recommendation
  - implementation report, **App. B-17**
- UK Bribery Act 2010, **17:8**
- U.N.
  - anticorruption declaration and convention, **App. C-17**
- United Nations
  - anticorruption declaration and convention, **17:4**
- World bank
  - procurement guidelines, **17:5**

## **INTERNATIONAL FINANCIAL INSTITUTIONS**

- Developing web, international anticorruption conventions, **5:18**

## **INTERNATIONALIZED STANDARDS**

- US FCPA 2006, **11:34**

## **INVESTMENTS**

- International anticorruption conventions. Anticorruption conventions, above

## **INVOKING INTERNATIONAL STANDARDS**

- Internationalized standards, **11:41**

## **JOINT VENTURE**

- Company owned or controlled by a government official, **5:26**
- degree of control by or benefit, **5:28**
- legitimate business motives and use of influence, **5:29**
- official position, **5:27**
- Foreign government, **5:30**
  - local laws, require government participation, **5:31**
  - treatment of government personnel, **5:32**

## **JOINT VENTURES**

- High-risk transactions, **11:31**

## **JURISDICTION**

- Accounting and record-keeping provisions, **1:22**
- Bribery, **1:3**
- FCPA violation elements, **1:3**
- Record-keeping, **1:22**

## **JUSTICE DEPARTMENT (DOJ)**

- Bribery enforcement, **1:17, 1:18**
- Enforcement, **1:17, 1:18**
- Opinion procedure, **25:1 to 25:5**

## **LAUNCHING INVESTIGATION**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:9**

## **LAUNDERING**

- Money Laundering** (this index)

## **LEGAL ISSUES, UNRESOLVED**

- Perennial issue, **11:11**

## **LEGITIMATE BUSINESS MOTIVES AND USE OF INFLUENCE**

- Joint venture, company owned or controlled by a government official, **5:29**

## **LIABILITY**

- Case summaries, **1:36**
- Directors and officers
  - general discussion, **1:35**
  - case summaries, **1:36**
  - private right of action, **1:37**
  - statute of limitations, **1:38**
- Private right of action, **1:37**
- Rights of action, **1:37**
- Statutes of limitations, **1:38**

## **LIMITING TRADITIONAL PROTECTIONS**

- Related considerations, **10:32**

## **LOBBYING AND INFLUENCING LEGISLATION**

- Other general FCPA issues, **5:38**

## **LOCAL AND THIRD-PARTY LAW ISSUES**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:15**

## **LOCAL LAWS, REQUIRE GOVERNMENT PARTICIPATION**

- Joint venture
  - foreign government, **5:31**

## **LOCAL POLITICAL, BUSINESS, AND SECURITY SITUATIONS**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:16**

## **LOCAL PROCEEDINGS**

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:19**

## **LOCKHEED**

- Enforcement actions
- FCPA internal investigations, new dynamics, **12:4**

## **LYING TO AUDITORS**

- Record-keeping provisions, **10:8**

## **3M COMPANY**

- Securities and Exchange Commission (SEC) enforcement, **46:13**

## INDEX

### MAKING ADJUSTMENTS

- Distinguishing features
- FCPA internal investigations, new dynamics, **12:21**

### MATERIAL MISSTATEMENTS

- Auditors' duty to detect fraud, **10:27**

### MATTER OF GE-INVISION, INC.

- Recent cases and opinion releases, 2005, **11:53**

### MATTER OF OIL STATES INTERNATIONAL

- Recent cases and opinion releases, **11:44**

### MERGERS AND ACQUISITIONS

- High-risk transactions, **11:30**

### MISUSE OF ASSETS OR SERVICES

- Sample company accounting and record-keeping policies and procedures, **21:21**

### MITIGATING RISKS

- Risk Management** (this index)

### MONITORING PERFORMANCE

- Avoiding FCPA violations, **5:57**

### MONTEDISON

- Recent activity
- SEC's enforcement of FCPA, **14:15**

### NEW DISCLOSURE REQUIREMENTS

- Related considerations, **10:19**

### NON-U.S. COMPANIES AND PERSONS

- Foreign Entities** (this index)

### OAS (ORGANIZATION OF AMERICAN STATES)

- OAS (Organization of American States) Inter-American Convention against Corruption, **App. 17-A**

### OAS CONVENTION

- Developing web, international anticorruption conventions, **5:13**
- Internationalized standards, **11:35**

### OECD (ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT)

- Convention, OECD Convention
- bribery, **2:1 to 2:5, App. 17-B, App. 17-F**
- FCPA amendments, **2:2**
- Foreign Public Officials in International Business Transactions, Combating Bribery of, **App. 17-F**
- Implementation, **2:3**
- Practical considerations, **2:4**
- Report on Implementing OECD Anti-bribery Convention in United States, **App. 2-A**
- standards, **2:1 to 2:5, App. 2-A**
- Council on Combating Bribery, implementation of the recommendation of the, **App. 17-B**
- Recommendation of OECD, **App. 17-B**

### OECD CONVENTION

- Developing web, international anticorruption conventions, **5:14**
- Internationalized standards, **11:36**

### OECD WATCHDOG GROUP IDENTIFIES WEAKNESSES IN FCPA

- Implications of OECD recommendations, **18:8**
- U.S. review
- affirmative defense for reasonable and bona fide expenditures, **18:7**
- business purpose test, **18:2**
- appeal in United States v. Kay & Murphy, **18:4**
- district court's decision, United States v. Kay & Murphy, **18:3**
- uncertainty remains, **18:5**
- exceptions for routine government payments, **18:6**
- U.S. review of business purpose test
- United States v. Kay & Murphy
- appeal, **18:4**
- district court's decision, **18:3**
- uncertainty remains, **18:5**

### OFFICERS

- Directors and Officers** (this index)

### OFFICIAL GUIDANCE

- Antibribery provisions, elements of a violation, **5:7**

### OFFICIAL POSITION

- Joint venture, company owned or controlled by a government official, **5:27**

### OPINION PROCEDURES

- Department of Justice (DOJ), **25:1 to 25:5**
- Index to releases, **25:4**
- Review and opinion procedure releases, **25:5**
- Review procedure, **25:2**
- Rule, **25:3**

### "ORDINARY AND NECESSARY" PAYMENTS

- Payments, **3:12**
- Taxation, **3:12**

### ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

- OECD (Organization for Economic Co-Operation and Development) (this index)

### ORGANIZATION OF AMERICAN STATES CONVENTION

- OAS (Organization of American States) Convention (this index)

### OTHER CONTEXTS

- Enforcement actions
- FCPA internal investigations, new dynamics, **12:6**

### OTHER GENERAL FCPA ISSUES

- Fcpa investment transaction, **5:33**

## OTHER REGIONAL CONVENTIONS

Developing web, international anticorruption conventions, **5:16**

## OTHER RELEVANT LAWS

Investment transaction, **5:11**

## PACIFIC

**Asia-Pacific** (this index)

## PAYMENTS

Bribery

facilitating payments, **1:15, 15:7, 21:15**

illegal or unethical payments, gifts, bribes, or gratuities, **21:18**

improper payments, **21:16**

permissible payments, **15:6**

sample bribery provisions, **21:5, 21:12, 21:19**

third-party payments, **15:5**

Direct payments, **3:11**

Facilitating payments

bribery, **1:15, 15:7, 21:15**

sample company bribery policies and procedures, **21:15**

Foreign activities, **21:12**

Grease payments, **3:10**

Illegal or unethical payments, gifts, bribes, or gratuities bribery, **21:18**

sample company bribery policies and procedures, **21:18**

Improper payments, **21:16**

Indirect payments, **3:11**

“Ordinary and necessary” payments, **3:12**

Permissible payments, **15:6**

Sample bribery provisions, **21:5, 21:12, 21:19**

Sample company bribery policies and procedures

general discussion, **21:5**

facilitating payments, **21:15**

foreign activities, **21:12**

foreign government officials, **21:19**

illegal or unethical payments, gifts, bribes, or gratuities, **21:18**

improper payments, **21:16**

Taxation

direct payments, **3:11**

grease payments, **3:10**

indirect payments, **3:11**

“ordinary and necessary” payments, **3:12**

Third-party payments, **15:5**

## PENALTIES

Bribery, **22:6**

International Anti-Bribery and Fair Competition Act of 1998, **22:10**

Sample FCPA compliance program

international Anti-Bribery and Fair Competition Act of 1998, **22:10**

standards for conduct, **22:6, 22:10**

## PENALTIES—Cont’d

US FCPA 2006, **11:5**

## PERMISSIBLE PAYMENTS

Bribery, **15:6**

## PERSON SUBJECT

Antibribery provisions, elements of a violation, **5:4**

## PLEA AGREEMENT

DPC co. ltd.

recent cases and opinion releases, 2005, **11:49**

## POTENTIAL PREFORMATIVE/PREMERGER PAYMENTS

Specific investment scenarios and issues

private joint ventures or mergers/acquisitions

threshold issues, **5:23**

## PRIVATE CAUSES OF ACTION

Sanctions, **15:12**

## PRIVATE JOINT VENTURES OR MERGERS/ACQUISITIONS

Specific investment scenarios and issues, **5:20**

threshold issues, **5:21**

## PRIVATE RIGHTS OF ACTION

Directors and officers, **1:37**

Liability, **1:37**

## PRIVILEGE

Distinguishing features

FCPA internal investigations, new dynamics, **12:13**

## PROPOSED PARTNER OR ACQUIREE

Transaction-specific measures

due diligence, **5:43**

## PROSECUTION AGREEMENTS, DEFERRED

Bribery, Department of Justice (DOJ), **1:18**

## PROTECTIONS

Generally, **23:1**

Communication lines for reporting violations or suspicious activities, **23:18**

## PUBLIC RELATIONS

Distinguishing features

FCPA internal investigations, new dynamics, **12:18**

## QUANTITATIVE AND QUALITATIVE ACCURACY

Record-keeping provisions, **10:5**

## RECENT ACTIVITY

SEC’s enforcement of FCPA, **14:5**

## RECENT CASES AND OPINION RELEASES

US FCPA 2006, **11:42**

## RECORD RETENTION

Sample company accounting and record-keeping policies and procedures, **21:24**

## RECORDS AND RECORD-KEEPING

Accounting and Record-keeping (this index)

## RED FLAGS

Compliance, 23:16

## REGULATORY IMPLEMENTATIONS AND GUIDANCE

US FCPA 2006, 11:9

## RELATED LAWS AND SANCTIONS

Perennial issues, 11:16

collateral sanctions, 11:20

commercial bribery, 11:23

conspiracy, 11:18

export controls, 11:17

international trade law, 11:24

local law of host country, 11:19

money laundering, 11:22

RICO

private actions, 11:21

## RELATIONSHIP, COMPLIANCE PROGRAMS

Internal accounting controls, 10:16

## REPRESENTATIONS AND WARRANTIES

Compliance, 1:32

Contracts, 1:32

## RIGHTS OF ACTION

Directors and officers, 1:37

Liability, 1:37

## RISEING COMPLIANCE STANDARDS

Perennial issues, 11:25

## RISK FACTORS

Auditors' duty to detect fraud, 10:28

## SAMPLE COMPLIANCE PROGRAMS

Accounting requirements, 22:7

Commercial representatives/agents

policy for selection of, foreign, App. 22-A

selection, retention, and compensation of, foreign, 22:11

Compensation of foreign commercial representatives/agents, 22:11

FCPA bribery prohibitions, 22:5 to 22:7

Foreign commercial representatives/agents

policy for selection, App. 22-A

selection, retention, and compensation, 22:11

Governing law, 22:4 to 22:10

International Anti-Bribery and Fair Competition Act of 1998, 22:8 to 22:10

International anti-corruption laws

agreement, certification of compliance with, 21:35

compliance certificate, 21:36

Organization, 22:2

Payments, 21:5, 21:12, 21:19

Penalties, 22:6, 22:10

## SAMPLE COMPLIANCE PROGRAMS—Cont'd

Policy for selection of foreign commercial representatives/agents, App. 22-A

Purpose, 22:1

Retention of foreign commercial representatives/agents, 22:11

Sample company accounting and record-keeping policies and procedures

accounting records, 21:32

accurate books, records, accounts, 21:31

accurate books and reporting, 21:30

books and records, 21:20 to 21:24, 21:28 to 21:34

communications, complete and accurate, books and records, 21:29

company records, accuracy, 21:33

company's business records, 21:22

falsification, 21:23

financial books and records outside the United States, 21:34

Foreign Corrupt Practices Act, 21:26

internal accounting controls, 21:25 to 21:27

internal control guidelines, 21:27

misuse of assets or services, 21:21

retention of records, 21:24

Sample company bribery policies and procedures agents and agency, 21:6

bribery, 21:1 to 21:19

business courtesies offered to foreign government employees, officials, and representatives, 21:2

business with foreign governments, 21:17

compliance, 21:3

dealing with foreign officials, 21:13

facilitating payments, 21:15

foreign activities, 21:10 to 21:12

Foreign Corrupt Practices Act, 21:8, 21:9, 21:14

foreign government officials, 21:19

foreign governments, 21:17

foreign representatives, agents, and consultants, 21:6

gifts, 21:11

government employees, 21:5

illegal or unethical payments, gifts, bribes, or gratuities, 21:18

improper influence, 21:1

improper payments, 21:16

influence, 21:1

international business, 21:7

payments, 21:5, 21:12, 21:15, 21:16, 21:18, 21:19

U.S. Foreign Corrupt Practices Acts, 21:9

Sample company policies and procedures

internal accounting controls, 21:25 to 21:27

internal control guidelines, 21:27

Sample compliance provisions for contract with representatives

compliance, App. 23-B

contracts, App. 23-B

## SAMPLE COMPLIANCE PROGRAMS—Cont'd

- Sample FCPA compliance program
  - accounting requirements, **22:7**
  - agents and agency, **22:11, App. 22-A, App. 22-B**
  - bribery, **22:5 to 22:7**
  - commercial representatives/agents selection, retention, and compensation of, foreign, **22:11, App. 22-A**
  - compensation of foreign commercial representatives/agents, **22:11**
  - FCPA bribery prohibitions, **22:5 to 22:7**
  - foreign commercial representatives/agents, selection, retention, and compensation of, **22:11**
  - governing law, **22:4 to 22:10**
  - International Anti-Bribery and Fair Competition Act of 1998, **22:8 to 22:10**
  - organization, **22:2**
  - penalties, **22:6, 22:10**
  - policy for selection of foreign commercial representatives/agents, **App. 22-A**
  - purpose, **22:1**
  - retention of foreign commercial representatives/agents, **22:11**
  - sample language for inclusion in international sales, marketing, agency and distribution agreements, and sample distribution agreement, **App. 22-B**
  - sanctions, **22:6, 22:10**
  - scope, **22:9**
  - selection, **22:11, App. 22-A**
  - standards for conduct, **22:3 to 22:10**
- Sample language for inclusion in international sales, marketing, agency and distribution agreements, and sample distribution agreement, **App. 22-B**
- Sample representative certification agreements
  - certification of compliance with international anti-corruption laws agreement, **21:35**
  - compliance certificate for international anti-corruption laws, **21:36**
- Sanctions, **22:6, 22:10**
- Scope, **22:9**
- Selection of foreign commercial representatives/agents, **22:11**
- Standards for conduct
  - general discussion, **22:3**
  - accounting requirements, **22:7**
  - FCPA bribery prohibitions, **22:5 to 22:7**
  - governing law, **22:4 to 22:10**
  - International Anti-Bribery and Fair Competition Act of 1998, **22:8 to 22:10**
  - penalties, **22:6, 22:10**
  - sanctions, **22:6, 22:10**
  - scope, **22:9**

## SANCTION POWERS

- SEC's enforcement of FCPA, **14:4**

## SANCTIONS

- Bribery
  - general discussion, **22:6**
  - civil, **15:10**
  - criminal, **15:9**
  - governmental guidance, **15:13**
  - other governmental action, **15:11**
  - private cause of action, **15:12**
- Civil sanctions, **15:10**
- Criminal sanctions, **15:9**
- Governmental guidance, **15:13**
- International Anti-Bribery and Fair Competition Act of 1998, **22:10**
- Other governmental action, **15:11**
- Private cause of action, **15:12**
- Sample FCPA compliance program
  - International Anti-Bribery and Fair Competition Act of 1998, **22:10**
  - standards for conduct, **22:6, 22:10**
- Standards for conduct, **22:6, 22:10**

## SARBANES-OXLEY ACT OF 2002

- Compliance programs, **1:33**

## SCHERING-PLOUGH CORPORATION

- Recent activity
  - SEC's enforcement of FCPA, **14:8**

## SEC COMMISSION REGULATION AND ENFORCEMENT OF THE FCPA

- Accounting provision
  - generally, **26:1-26:21**
  - commission policy, **26:15**
  - conclusion, **26:21**
  - implied private right of action, **26:9**
  - interpretation of the accounting provisions, **26:10-26:14**
  - passage of the FCPA, **26:8**
  - proposed rules
    - generally, **26:3-26:7**
  - responsibilities for internal control, **26:16-26:20**

## SEC V. TYCO INTERNATIONAL LTD

- Recent cases and opinion releases, **11:45**

## SEC'S ENFORCEMENT OF FCPA

- Authority and nature of investigations, **14:2**
- Background, **14:1**
- Cooperation with department of justice, **14:3**
- Future of SEC activity, **14:17**
- Message from SEC's cases, **14:16**
- Recent activity, **14:5**
  - ABB, Ltd., **14:7**
  - American Bank Note Holographics, Inc., **14:12**
  - american rice, **14:6**
  - baker hughes, **14:11**
  - bellsouth corporation, **14:9**
  - chiquita brands, **14:10**



## SEC'S ENFORCEMENT OF FCPA—Cont'd

- Recent activity, **14:5**—Cont'd
  - IBM, **14:13**
  - montedison, **14:15**
  - schering-plough corporation, **14:8**
  - triton energy, **14:14**
- Sanction powers, **14:4**

## SECURITIES AND EXCHANGE COMMISSION

Enforcement, **App. G**

## SECURITIES AND EXCHANGE COMMISSION (SEC)

- Accounting and record-keeping provisions
  - enforcement, **1:23, 1:24**
- Albemarle Corp., **46:16**
- Albemarle Corporation, **46:15**
- Bribery, **1:19**
- Carl Zaglin, Aldo Marchena, Francisco Cosenza, **46:18**
- Clear Channel Outdoor Holdings Inc., **46:14**
- Enforcement
  - accounting, **1:23**
  - Albemarle Corp., **46:16**
  - Albemarle Corporation, **46:15**
  - bribery, **1:19**
  - Carl Zaglin, Aldo Marchena, Francisco Cosenza, **46:18**
  - Clear Channel Outdoor Holdings Inc., **46:14**
  - Freepoint Commodities LLC, **46:19**
  - H.W. Wood Limited, **46:17**
  - 3M Company, **46:13**
  - Non-prosecution agreements, **1:24**
  - Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices (Feb. 23, 1979), **App. 26-C**
  - record-keeping, **1:23, 1:24**
  - Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**
  - Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**
  - Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**
  - SEC Notification of Enactment of Foreign Corrupt Practices Act of 1977 (Feb. 23, 1978), **App. 26-A**
  - SEC Opinion of Special Counsel (May 16, 1978), **App. 26-B**
  - SEC Report of Management's Responsibilities (July 26, 1988), **App. 26-G**

## SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

- Enforcement—Cont'd
  - SEC Staff Accounting Bulletin No. 99 - Materiality (August 1999), **App. 26-I**
  - Speech by SEC Chairman Williams on FCPA Accounting Provisions (Jan. 13, 1981) before AICPA Annual Conference, **App. 26-E**
  - Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**
  - Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**
  - "The Importance of High Quality Accounting Standards," Remarks by Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, before the Inter-American Development Bank, Washington D.C., September 29, 1997, **App. 26-H**
  - Tysers Insurance Brokers Limited, **46:17**
- Freepoint Commodities LLC, **46:19**
- H.W. Wood Limited, **46:17**
- 3M Company, **46:13**
- Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices (Feb. 23, 1979), **App. 26-C**
- Record-keeping, **1:23, 1:24**
- Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**
- Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**
- Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**
- SEC Notification of Enactment of Foreign Corrupt Practices Act of 1977 (Feb. 23, 1978), **App. 26-A**
- SEC Opinion of Special Counsel (May 16, 1978), **App. 26-B**
- SEC Report of Management's Responsibilities (July 26, 1988), **App. 26-G**
- SEC Staff Accounting Bulletin No. 99 - Materiality (August 1999), **App. 26-I**
- Speech by SEC Chairman Williams on FCPA Accounting Provisions (Jan. 13, 1981) before AICPA Annual Conference, **App. 26-E**
- Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**
- Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**

## SECURITIES AND EXCHANGE COMMISSION (SEC)—Cont'd

“The Importance of High Quality Accounting Standards,” Remarks by Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, before the Inter-American Development Bank, Washington D.C., September 29, 1997, **App. 26-H**  
Tysers Insurance Brokers Limited, **46:17**

## SECURITIES EXCHANGE ACT OF 1934

Release No. 44969—Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001), **App. 26-J**

Release No. 34-18255—Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981), **App. 26-F**

Report of Investigation Pursuant to § 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions (Oct. 23, 2001)—Release No. 44969, **App. 26-J**

Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Sept. 5, 1980), **App. 26-D**

Statement of Commission Policy Concerning § 30A of the Securities Exchange Act of 1934 (Nov. 12, 1981)—Release No. 34-18255, **App. 26-F**

## SELECTION OF THE INVESTIGATOR

Distinguishing features

FCPA internal investigations, new dynamics, **12:26**

## SEMINAR REPORT: FCPA AND OECD CONVENTION- MITIGATION AND MANAGING RISKS

Assistance by The U.S. government, U.S. companies companies get advice and counseling about the FCPA, difficulty interpreting, issues arise, **7:26**  
foreign competitor has obtained or is seeking to obtain a contract through foreign bribery, **7:27**  
performing due diligence, avoid problems under the FCPA, first place, **7:23**

flexible market research program, **7:25**

international company profile program, **7:24**

FCPA risk management

part 1: mitigating risk form relationships agents, representatives, and consultants, **7:12**

part 2: mitigating risk to parent companies, actions of subsidiaries and affiliates, **7:13**

part 3: managing FCPA risks in acquisitions introduction and issues to watch, **7:14**

steps in due diligence, **7:15**

part 4: managing commercial disputes with FCPA implications, **7:16**

part 5: concurrent/converging compliance challenges FCPA investigation and the pitfalls of foreign local law, **7:19**

## SEMINAR REPORT: FCPA AND OECD CONVENTION- MITIGATION AND MANAGING RISKS—Cont'd

FCPA risk management—Cont'd

part 5: concurrent/converging compliance challenges —Cont'd

new development money laundering laws, foreign corruption, **7:17**

reporting of fees and commissions, foreign local law and ITAR part 130, **7:18**

update on implementation of the OECD Convention, **7:20**

part 6: allegations of questionable payment and improper record keeping, **7:21**

part 7: allegations of questionable payment and DOJ investigations, **7:21**

Overview FCPA: elements, processes, common and recurring, and open issues

elements- accounting and record-keeping provisions, **7:8**

application, **7:9**

essential components compliance, **7:10**

facilitating payments, **7:11**

elements- antibribery provisions, **7:3**

compliance issues, **7:7**

exceptions and defenses, **7:5**

penalties, **7:6**

subject FCPA, **7:4**

generally, **7:1**

history of FCPA, **7:2**

## SOCIAL BENEFITS

Other general FCPA issues, **5:37**

## SPECIFIC INVESTMENT SCENARIOS AND ISSUES

Fcpa investment transaction, **5:19**

Private joint ventures or mergers/acquisitions threshold issues

identity of partner or acquiree, **5:22**

potential preformation/premerger payments, **5:23**

## STATUTE

US FCPA 2006, **11:8**

## STATUTES

Foreign Corrupt Practices Act, **App. A, App. B, App. C**

Internal Revenue Code, **3:2**

International Anti-Bribery Act of 1988, **App. D**

International Anti-Bribery and Fair Competition Act of 1998, **22:8**

Sarbanes-Oxley Act of 2002, **1:33**

Securities Exchange Act of 1934, **App. 26-D, App. 26-F, App. 26-J**

26 C.F.R. § 1.162-18, **App. 3-A**

## STATUTES OF LIMITATIONS

Liability, **1:38**

## **SUBSEQUENT CHANGES IN OWNERSHIP**

Specific investment scenarios and issues  
private joint ventures or mergers/acquisitions, **5:25**

## **SUSPICIOUS ACTIVITIES**

Protection of company, **23:18**  
Reporting of, communication lines, **23:18**

## **TAXATION**

General discussion, **3:1, 3:3, 3:13, 3:14**  
Corrupt intent, **3:7**  
Direct and indirect payments, **3:9**  
Direct payments, **3:11**  
Domestic concerns, **3:4**  
Exceptions, **3:10**  
Foreign officials, **3:4**  
Grease payments, **3:10**  
Indirect payments, **3:11**  
Influence, **3:8**  
Intent, corrupt, **3:7**  
Internal Revenue Code § 162 (c), **3:2**  
Interstate commerce, **3:5**  
IRS Information Release No. 1943, **App. 3-A**  
Issuers, **3:4**  
“Ordinary and necessary” payments, **3:12**  
Payments  
direct payments, **3:11**  
grease payments, **3:10**  
indirect payments, **3:11**  
“ordinary and necessary” payments, **3:12**  
26 C.F.R. § 1.162-18, **App. 3-A**

## **TELEGLOBE**

Enforcement actions  
FCPA internal investigations, new dynamics, **12:5**

## **THE FOREIGN CORRUPT PRACTICE ACT: ACCOUNTING AND RECORD-KEEPING PROVISIONS**

Conclusion, **10:41**  
Enforcement, **10:33**  
civil actions, **10:38**  
ADRs, **10:40**  
foreign subsidiaries, **10:39**  
criminal actions, **10:35**  
United States v. Crop Growers Corp., **10:37**  
United States v. UNC/Lear Services, Inc., **10:36**  
effective enforcement tool, **10:34**  
Internal accounting controls, **10:9**  
broad reach, internal control provisions, **10:15**  
elements, internal control system, **10:10**  
controlling the corporate environment, **10:11**  
determining reasonable assurance, **10:14**  
monitoring compliance, **10:13**  
reviewing internal accounting controls, **10:12**  
relationship with compliance programs, **10:16**  
SAS No. 30 letters, **10:17**

## **THE FOREIGN CORRUPT PRACTICE ACT: ACCOUNTING AND RECORD-KEEPING PROVISIONS—Cont’d**

Record-keeping provisions, **10:4**  
facilitating payments, **10:7**  
falsification of books and records, **10:6**  
lying to auditors, **10:8**  
quantitative and qualitative accuracy, **10:5**  
Related considerations, **10:18**  
auditors’ duty to detect fraud, **10:26**  
assessing risk, **10:29**  
disclosure obligations, **10:30**  
material misstatements, **10:27**  
risk factors, **10:28**  
scope of application of SAS No. 82, **10:31**  
limiting traditional protections, **10:32**  
new disclosure requirements, **10:19**  
actions upon discovery, **10:21**  
auditor’s role, detecting fraud, **10:20**  
contingent liabilities, **10:24**  
immaterial statements, **10:22**  
material misstatements, **10:23**  
qualitative materiality, **10:25**  
Scope, **10:1**  
american depositary receipts, **10:3**  
foreign subsidiaries, **10:2**

## **THIRD PARTIES**

Antibribery provisions, third-party payments, **15:5**  
Bribery, **15:5**  
Payments, **15:5**  
Third-party payments, **15:5**

## **THIRD PARTIES AND VICARIOUS LIABILITY**

Perennial issue, **11:12**

## **TRAINING**

Compliance, **23:19**

## **TREATMENT OF GOVERNMENT PERSONNEL**

Joint venture  
foreign government, **5:32**

## **TRITON ENERGY**

Recent activity  
SEC’s enforcement of FCPA, **14:14**

## **U.N. CONVENTIONS**

Developing web, international anticorruption conventions, **5:17**

## **UN INTERNATIONAL CONVENTION AGAINST CORRUPTION**

Internationalized standards, **11:38**

## **UNITED NATIONS**

U.N. (United Nations) Convention against Corruption  
general discussion, **App. 17-C**

## **UNITED NATIONS—Cont'd**

U.N. (United Nations) Declaration against Corruption and Bribery in International Commercial Transactions, **App. 17-C**

## **UNITED STATES V. AMADOU KANE DIALLO**

False pretenses, **46:11**  
False representations, **46:11**  
Indictment, **46:11**

## **UNITED STATES V. CORPORACION FINANCIERA COLOMBIANA SA**

Conspiracy, **46:12**

## **UNITED STATES V. FAHEEM MOUSA SALAM**

Recent cases and opinion releases, **11:47**

## **UNITED STATES V. MICRUS CORPORATION**

Recent cases and opinion releases, 2005, **11:52**

## **UNITED STATES V. MONSANTO CO.**

Recent cases and opinion releases, 2005, **11:54**

## **UNITED STATES V. RICHARD JOHN NOVAK**

Recent cases and opinion releases, **11:46**

## **UNITED STATES V. STEVEN LYNWOOD HEAD**

Recent cases and opinion releases, **11:43**

## **UNITED STATES V. TITAN**

Recent cases and opinion releases, 2005, **11:51**

## **US FCPA 2006**

Background, **11:7**  
regulatory implementations and guidance, **11:9**  
statute, **11:8**  
Compliance obligations  
Federal Sentencing Guidelines, **11:56**  
US v. Metcalf and Eddy, **11:57**  
High-risk transactions, **11:28**  
business with government officials or family member, **11:32**  
foreign procurement, **11:33**  
government ownership and business control, countries with, **11:29**  
joint ventures, **11:31**  
mergers and acquisitions, **11:30**  
Internationalized standards, **11:34**  
African Union Convention  
corruption, **11:39**  
council of Europe Convention, **11:37**  
Invoking international standards, **11:41**  
OAS convention, **11:35**  
OECD Convention, **11:36**  
UN international convention against corruption, **11:38**  
World Bank Voluntary Disclosure Program, **11:40**  
Perennial issues, **11:10**  
aggressive enforcement climate, **11:26**  
books and records, **11:15**  
facilitating payments, **11:14**

## **US FCPA 2006—Cont'd**

Perennial issues, **11:10**—Cont'd  
hosting and hospitality, **11:13**  
independent compliance monitors, **11:27**  
legal issues, unresolved, **11:11**  
related laws and sanctions, **11:16**  
collateral sanctions, **11:20**  
commercial bribery, **11:23**  
conspiracy, **11:18**  
export controls, **11:17**  
international trade law, **11:24**  
local law of host country, **11:19**  
money laundering, **11:22**  
private actions under RICO, **11:21**  
rising compliance standards, **11:25**  
third parties and vicarious liability, **11:12**  
Recent cases and opinion releases, 2005, **11:48**  
DOJ releases, **11:55**  
Matter of GE-InVision, Inc., **11:53**  
plea agreement  
DPC co. ltd., **11:49**  
United States v. Micrus Corporation, **11:52**  
United States v. Monsanto Co., **11:54**  
United States v. Titan, **11:51**  
US v. Robert Thomson and James Reilly, **11:50**  
Recent cases and opinion releases, 2006, **11:42**  
Matter of Oil States International, **11:44**  
SEC v. Tyco International Ltd, **11:45**  
United States v. Faheem Mousa Salam, **11:47**  
United States v. Richard John Novak, **11:46**  
United States v. Steven Lynwood Head, **11:43**  
Summary  
elements, **11:3**  
enforcement, **11:6**  
exceptions and affirmative defences, **11:4**  
penalties, **11:5**  
scope, **11:2**

## **US V. METCALF AND EDDY**

Compliance obligations  
Federal Sentencing Guidelines, **11:57**

## **US V. ROBERT THOMSON AND JAMES REILLY**

Recent cases and opinion releases, 2005, **11:50**

## **VALUATION/COMPENSATION ISSUES**

Other general FCPA issues, **5:34**

## **VIOLATIONS**

Reporting violations, communication lines for, **23:18**

## **VOLUNTARY DISCLOSURE DOJ OR SEC**

Disclosure requirements under FCPA, **6:8**

## **WARRANTIES**

**Representations and Warranties** (this index)

## INDEX

### **WHETHER TO INVESTIGATE**

Distinguishing features

FCPA internal investigations, new dynamics, **12:8**

### **WORLD BANK VOLUNTARY DISCLOSURE PROGRAM**

Internationalized standards, **11:40**