



# **Steps Taken by State Parties to Implement and Enforce the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

**AS OF DECEMBER 2012 WORKING GROUP  
ON BRIBERY MEETING**

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## ARGENTINA

(Information as of October 2011)

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The Convention was signed on 17 December 1997. Congress approved the Convention by Law 25 319 of 7 September 2000, which was published in the official journal ("*Boletín Oficial*") on 18 October 2000. The instrument of ratification was deposited with the OECD Secretary-General on 8 February 2001. The Convention entered into force for Argentina on 9 April 2001.

### ***Implementing legislation***

Identification of the law: law 25.188 "Ethics in the Exercise of Public Office" ("*Etica de la función pública*"), which introduces art. 258 bis of the Criminal Code penalizing transnational bribery in accordance with the Inter American Convention against Corruption.

Publication in official journal: *Boletín Oficial* 1 November 1999. Date of entry into force: 10 November 1999.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

Law 24 767 (*Boletín Oficial* 16 January 1997) on International Cooperation in Criminal Matters

Law 25 246 (*Boletín Oficial* 10 May 2000) on Money Laundering, creating the Financial Intelligence Unit.

Law 26 683 (*Boletín Oficial* 21 June 2011), modifying the anti-money laundering régime and introducing criminal liability of legal persons for money laundering offence.

### ***Recommendations for remedial action under Phase 1***

Law 25.825 (*Boletín Oficial* 11 December 2003), modifying the definition of the offence in art. 258 bis following the recommendations of the Working Group during Phase 1.

### ***Other information***

#### ***Relevant authorities***

Dirección General de Consejería Legal, Ministerio de Relaciones Exteriores, Comercio Internacional y Culto: [www.mrecic.gov.ar](http://www.mrecic.gov.ar)

Oficina Anticorrupción, Ministerio de Justicia, Seguridad y Derechos Humanos : [www.anticorrupcion.gov.ar](http://www.anticorrupcion.gov.ar)

Unidad de Información Financiera, Ministerio de Justicia, Seguridad y Derechos Humanos : [www.uif.gov.ar](http://www.uif.gov.ar)

Ministerio Público Fiscal

[www.mpf.gov.ar](http://www.mpf.gov.ar)

*Relevant Internet links to national implementing legislation*

[www.anticorrupcion.gov.ar/](http://www.anticorrupcion.gov.ar/)

The Foreign Ministry of Argentina has a link on the web site “Argentina Trade Net” (ATNet) ([www.argentinatradenet.gov.ar](http://www.argentinatradenet.gov.ar)) and [www.exportar.com.ar](http://www.exportar.com.ar), under the headline “Argentina penaliza el soborno a funcionarios públicos extranjeros” (Argentina criminalizes bribery of foreign public officials). By clicking on it, the user has access on information, inter alia, regarding Article 1 of the OECD Convention and Article 258 bis of the Argentine Penal Code.

[www.infoleg.gov.ar](http://www.infoleg.gov.ar) (National laws and regulations in Spanish)

*Signature/Ratification of other relevant international instruments*

- Inter-American Convention against Corruption (Caracas, Venezuela, 29 March 1996)  
Signed: 29 March 1996  
Approved: 4 December 1996, law 26 097 (*Boletín Oficial* 17 January 1997)  
Deposit of the instrument of ratification: 9 October 1997  
In force since: 7 November 1997
- United Nations Convention against Transnational Organized Crime (Palermo, Italy, 12 December 2000):  
Signed: 12 December 2000  
Approved: 1 August 2002, law 25 632 (*Boletín Oficial* 30 August 2002)  
Deposit of the instrument of ratification: 19 November 2002  
In force since: 29 March 2003
- United Nations Convention against Corruption (Mérida, México, 9 December 2003)  
Signed: 19 December 2003  
Approved: 10 May 2006, law 26 097 (*Boletín Oficial* 9 June 2006)  
Deposit of the instrument of ratification: 28 August 2006  
In force since: 27 September 2006

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (April 2001)

<http://www.oecd.org/dataoecd/31/50/2078382.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2008)

<http://www.oecd.org/dataoecd/35/28/40975295.pdf>

Phase 2: Follow-up report on the Implementation of the Phase 2 Recommendations on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (September 2010)

<http://www.oecd.org/dataoecd/38/4/46057339.pdf>

## **AUSTRALIA**

*(Information as of 28 November 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Australia ratified the Convention on 18 October 1999.

### ***Implementing legislation***

Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Cth) (Division 70 Criminal Code (Cth))

Date of entry into force: 17 December 1999.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- Auditor-General Act 1997 (Cth)
- *Criminal Code Act 1995* (Cth) Chapter 4 and Division 400
- Commonwealth Authorities and Companies Act 1997 (Cth)
- Corporations Act 2001 (Cth)
- Extradition Act 1988 (Cth)
- Financial Management and Accountability Act 1997 (Cth)
- Income Tax Assessment Act 1997 (Cth)
- Mutual Assistance in Business Regulation Act 1996 (Cth)
- Mutual Assistance in Criminal Matters Act 1987 (Cth)
- Proceeds of Crime Act 2002 (Cth)
- Financial Transaction Reports Act 1988 (Cth)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

International Trade Integrity Act 2007 (Cth)

### ***Recent developments to Australia's anti-bribery framework***

On 4 February 2010, the Australian Parliament passed the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010, which increased the financial penalties for bribery offences. For each bribery offence, the new penalty for an individual is imprisonment for up to 10 years and/or a fine of up to 10 000 penalty units (currently AUD 1.1 million and soon to increase to AUD 1.7 million). The new penalty for a body corporate is a fine of up to 100 000 penalty units (currently AUD 11 million and soon to

increase to AUD 17 million) or three times the value of benefits obtained by the act of bribery, whichever is greater. If the value of benefits obtained from bribery cannot be ascertained, the penalty is a fine of up to 100 000 penalty units or 10% of the annual turnover of the company, whichever is greater. This formula is based on existing penalties for restrictive trade practices and cartel behaviour but allows a higher monetary fine due to the serious criminal nature of bribery and the serious detrimental effects of bribery.

The Australian Transaction Reports and Analysis Centre (AUSTRAC) has updated *Information Circular No. 42: Bribery of Foreign Public Officials* to refer to links between the foreign bribery offence and money laundering offences. The Information Circular now states that bribery may also trigger charges of money laundering under Division 400 of the *Criminal Code Act 1995*. The Information Circular is publicly available and used in training by AUSTRAC. It can be accessed at [http://www.austrac.gov.au/files/aic42\\_bribery\\_foreign\\_public\\_officials.pdf](http://www.austrac.gov.au/files/aic42_bribery_foreign_public_officials.pdf).

The Australian Trade Commission (Austrade) has updated its website to ensure information about the offence of foreign bribery is included in the Legal Issues section, in addition to the Risk Management section, of the website. The Austrade website also provides advice on specific export markets and has confirmed that information about the foreign bribery offence is included in country-specific guide to doing business.

The Australian Taxation Office has amended its website to ensure advice regarding facilitation payments refers to payments of minor value.

On 24 September 2007, Australia passed the *International Trade Integrity Act 2007*. The Act principally was to implement recommendations from the Cole *Inquiry into certain Australian companies in relation to the Iraq Oil-for-Food Programme* but also implemented three recommendations from the Working Group. The Act amended the offence of foreign bribery so that a defence is available only if a benefit offered or paid is permitted or required by the written law governing a foreign public official. The Act also clarified that any other perception that a benefit was required or permitted must be disregarded and that a charge of foreign bribery can be satisfied regardless of the results of an alleged bribe.

On 15 November 2011, the Australian Government released a public consultation paper on Australia's foreign bribery laws. In relation to the foreign bribery offence, the paper seeks public comment on the possibility of amending the foreign bribery offence to:

- remove the 'facilitation payments' defence to the foreign bribery offence
- clarify that a court may consider the value of a benefit offered or given where value alone suggests a benefit is not legitimately due, and
- remove the requirement to identify a particular foreign public official in order to establish an offence.

The public consultation process formally closed on 15 December 2011. However, the Attorney-General's Department has agreed to receive a small number of submissions since that date. The submissions will inform the Government's consideration of possible reforms to strengthen Australia's foreign bribery laws.

The public consultation paper referred to in our update is available on the Australian Government Attorney-General's Department's Foreign Bribery website at <http://www.ag.gov.au/foreignbribery> (or alternatively at: [http://www.crimeprevention.gov.au/agd/WWW/ncphome.nsf/Page/Financial\\_Crime\\_Bribery\\_of\\_Foreign\\_Public\\_Officials](http://www.crimeprevention.gov.au/agd/WWW/ncphome.nsf/Page/Financial_Crime_Bribery_of_Foreign_Public_Officials)) in both Microsoft Word and PDF formats.

### ***International engagement and cooperation on foreign bribery***

Australia actively supports the OECD's work in the G20 Anti-Corruption Working Group, including:

- completing the OECD survey of domestic measures in place to combat foreign bribery
- participation in the OECD-KPK international conference Shaping a New World: Combating Foreign Bribery in International Business Transactions, held in May 2011 in Bali, Indonesia, and
- taking practical steps to implement the multilateral cooperation objectives of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In partnership with China and Indonesia, Australia will oversee the production of a G20 guide to mutual legal assistance, and is leading a survey of G20 priorities to strengthen mutual legal assistance and extradition.

Australia led the development of the APEC Code of Conduct for Business. The Code outlines policy and procedures that should be used to prevent bribery and corruption and is particularly well suited to the needs of small and medium enterprises. The Code has been implemented in Vietnam, Thailand and Chile, and the Philippines is now implementing the Code. The United States is also using the Code as a basis for outreach to specific industry sectors, including pharmaceuticals.

Australia is also working with the Philippines, Thailand, Indonesia and Malaysia to improve the production and dissemination of financial intelligence relevant to the fight against corruption through the Combating Corruption and Anti-Money Laundering Program. The program aims to establish stronger domestic and regional cooperation among financial intelligence units, regulators and anti-corruption agencies.

### ***Countries' international commitments arising from other international instruments.***

Australia signed the UN Convention against Corruption on 9 December 2003. Australia considers that it complies with all of the Convention's mandatory requirements. In accordance with Australia's domestic process for treaty ratification, the Convention was tabled before Parliament on 7 December 2004. The Joint Standing Committee on Treaties conducted a hearing into the ratification of the Convention on 7 March 2005 and issued a report in August 2005. Australia ratified the Convention on 7 December 2005.

In 2011-2012 Australia's compliance with Chapters III (Criminalisation & Law Enforcement) and IV (International Cooperation) of the UN Convention against Corruption was reviewed. The review, conducted by a team of experts from the United States and Turkey, found Australia fully compliant with chapters III and IV of UNCAC. The review also recommended Australia continue to work on a number of initiatives including adopting and implementing whistleblower protection legislation, and the current review of facilitation payments. The findings and recommendations arising from the UNCAC review will be considered in developing Australia's first National Anti-Corruption Plan.

Australia is a founding member of the Financial Action Task Force (FATF) on Anti-Money Laundering and Counter Terrorist Financing. In February 2012 the Australian Government endorsed the



revised FATF International standards on combating money laundering and the financing of terrorism and proliferation.

Australia is a key member of the G20 Anti-Corruption Working Group and has worked closely with members to develop the revised Action Plan for 2013-14. Australia is committed to working closely with Russia in 2013 to continue progress against the Action Plan in the lead up to Australia's host year in 2014 and beyond. Australia has been involved in a number of initiatives, such as working with China and Indonesia to improve international cooperation to combat corruption. This has included the development of the G20 Guide to Mutual Legal Assistance.

Australia ratified the UN Convention against Transnational Organized Crime on 27 May 2004.

Australia is an active participant in the Asia Development Bank OECD Anti-Corruption Initiative for Asia and the Pacific and endorsed the Initiative's Action plan in October 2003.

In November 2004 Australia endorsed APEC's Santiago Commitment to Fight Corruption and Ensure Transparency and Course of Action on Fighting Corruption and Ensuring Transparency.

### ***Other information***

#### ***Relevant authorities***

##### **Enforcement:**

Information about foreign bribery offences should be reported to the Australian Federal Police:

Postal address: GPO Box 401  
CANBERRA ACT 2601  
AUSTRALIA  
Website: [www.afp.gov.au](http://www.afp.gov.au)

##### **Policy:**

Attorney-General's Department

Postal address: Robert Garran Offices  
National Circuit  
BARTON ACT 2600  
AUSTRALIA  
Website: [www.ag.gov.au/foreignbribery](http://www.ag.gov.au/foreignbribery)

#### ***Relevant Internet links to national implementing legislation***

[www.comlaw.gov.au](http://www.comlaw.gov.au)

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (December 1999)

<http://www.oecd.org/dataoecd/0/29/2378916.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (January 2006)

<http://www.oecd.org/dataoecd/57/42/35937659.pdf>

Phase 2: Follow-Up Report on the Implementation of the Phase 2 Recommendations Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation on Combating Bribery in International Business Transactions (August 2008)

<http://oecd.org/dataoecd/37/4/41305864.pdf>

## **AUSTRIA**

*(Information as of November 2009)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The bill for ratification of the OECD-Convention was published on 24 March 1999 in Federal Law Gazette (Bundesgesetzblatt; BGBl.) III 176/1999. The instrument of ratification was deposited with the OECD Secretary-General on 20 May 1999.

### ***Implementing legislation***

The legislation implementing the OECD-Convention (“Strafrechtsänderungsgesetz 1998”) was published in the Federal Law Gazette on 20 August 1998 (BGBl. I 1998/153) and entered into force 1 October 1998. The legislation was amended by the Act changing the Criminal Law 2008 (“Strafrechtsänderungsgesetz 2008”) published in the Federal Law Gazette Nr. I 109/2007 entered into force 1 January 2008 and by the Act changing die Criminal Law on Corruption 2009 (Korruptionsstrafrechtsänderungsgesetz 2009) published in the Federal Law Gazette Nr. I 98/2009 entered into force 1 September 2009. According to the Act changing the Criminal Law 2008 the Centralised Corruption Prosecution Service competent to investigate and prosecute criminal offences related to corruption all over the country was created which is in place since 1 January 2009. The Act changing the Criminal Law on Corruption 2009 states more severe penalties for active and passive bribery. In particular active and passive bribery is punishable by a punishment of imprisonment from one up to ten years if the amount of the undue advantage is more than 50.000,-- Euro (Sec. 304 par 2 and Sec. 307 par 2 of the Austrian Criminal Code). The Act on Responsibility of Legal Persons published in Federal Law Gazette Nr. I 151/2005 entered into force 1 January 2006.

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations***

Austria ratified the United Nations Convention against Corruption in November 2005.

The Council of Europe Criminal Law Convention on Corruption was signed 13 October 2000 but has not yet been ratified, whereby currently the ratification is under preparation.

On the EU-level, Austria has signed, ratified and implemented (by the above mentioned “Strafrechtsänderungsgesetz 1998”), the (first) protocol to the Convention on the Protection of the Financial Interest (notification of the ratification on 21 May 1999) and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (notification of the ratification on 19 January 2000) and has ratified the Second Protocol to the Convention on the Protection of the Financial Interests. Extradition and mutual legal assistance can be afforded either on the basis of the above-mentioned Conventions, which are in general directly applicable to Austrian authorities upon ratification, or on the basis of the applicable bilateral and multilateral extradition and mla-treaties to which Austria is a party. In lack of a treaty base, extradition and mla can be afforded on the basis of the Austrian Extradition and Mutual Legal Assistance Act (ARHG), provided that the reciprocity requirement is fulfilled..

### ***Other information***

#### ***Relevant authorities***

- Corruption Public Prosecution Service
- Federal Bureau for Internal Affairs

- Any other Police and Public Prosecution authorities

*Relevant Internet links to national implementing legislation*

The relevant internet link to obtain the wording of (any) national legislation (including national legislation to implement the OECD-Convention) is [www.ris.bka.gv.at](http://www.ris.bka.gv.at).

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (December 1999)

<http://www.oecd.org/dataoecd/2/45/2380506.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (February 2006)

<http://www.oecd.org/dataoecd/16/22/36180957.pdf>

Phase 2: Follow-Up Report on the Implementation of the Phase 2 Recommendations Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation on Combating Bribery in International Business Transactions (March 2008)

<http://www.oecd.org/dataoecd/55/57/40656709.pdf>

## BELGIUM

(Information as of 23 November 2012)

### *Date of deposit of instrument of ratification/acceptance or date of accession*

The Convention was signed on 17 December 1997. The Ratification Bill was adopted by the Senate on 20 April 1999 and by the Chamber of Representatives on 29 April 1999. The Ratification Act received royal approval on 9 June 1999. Belgium deposited its ratification instrument with OECD on 27 July 1999.

### *Implementing legislation*

To meet the requirements of the OECD Convention, and more generally to modernize the Criminal Code's provisions on bribery, which dated from 1867 and had not been substantially amended since then, the Belgian Parliament adopted two Acts. The first is the Bribery Prevention Act of 10 February 1999, adopted by Parliament on 4 February 1999 and signed by the King on 10 February 1999, which entered into force on 3 April 1999, following publication in the *Moniteur belge* (Official Gazette) on 23 March 1999. This Act amends in particular the provisions contained in Title IV of the Criminal Code in Articles 246-252 of Chapter IV on "The Bribery of Public Officials". The second Act is that of 4 May 1999, which entered into force on 3 August 1999. This Act establishes the criminal liability of legal persons, henceforth subject to the provisions the Bribery Prevention Act of 10 February 1999.

The main objectives of the amendments to the Criminal Code, as explained by the Minister of Justice in his introductory presentations to the Senate and later to the Chamber of Representatives, are three-fold. The first objective is to cover new offences contained in the OECD Convention and not previously covered by Belgian legislation (bribery of foreign public officials and international civil servants), as well as other offences such as bribery of an applicant for a public function, trading in influence and private corruption. The second objective is to fill some gaps in the field of sanctions, primarily by adapting penalties to current penological trends (higher minimum and maximum penalties for sentences involving deprivation of liberty and for fines), by introducing new administrative sanctions against public works contractors who engage in bribery, and by amending the Income Tax Code to limit the tax deductibility of bribes. The third objective is to broaden the extraterritorial jurisdiction of Belgian courts, in particular as regards bribery involving foreign public officials.

This Act of 4 May 1999 was adapted by the Act of 11 May 2007 concerning the adaptation of the legislation about the combat against bribery. This Act was published in the *Moniteur Belge* on the 8<sup>th</sup> of June 2007 and entered into force on the same day.

The goal of this law was to transpose the recommendations made by the OECD into Belgian Law. For that end the law changed the previous law on 3 main pressure points, by inserting:

- A general prohibition to the tax-deduction of all benefits granted to a foreign public official
- A functional approach to the definition of a foreign public official, whereby the function is decisive and not the statute of the person and
- A more effective extraterritorial jurisdiction of Belgian Courts by an active principle of personality.

***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

Concerning other relevant international instruments, Belgium has ratified the Council of Europe Criminal Law Convention on Corruption. The Ratification Bill of 19 February 2004 was published in the *Moniteur belge* on the 10th May 2004 and entered into force ten days later. Belgium has also ratified the Civil Law Convention on Corruption (Ratification Bill of 15 February 2007, published on the 28th of March 2007) and the Council Of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Ratification Bill of 29 August 2009, published on the 22nd of December 2009).

Belgium has signed the United Nations Convention against Corruption on 10 December 2003 and ratified it by the Ratification Bill of the 8th May of 2007. It entered into force on the 25th October 2008.

On the EU-level Belgium has signed, ratified and implemented the first and second protocol to the Convention on the Protection of the Financial Interests and the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union. Ratification was done in one bill of 17 February 2002, published on the 15 May 2002 and entered into force ten days later.

Some other recent laws and bills that can be of importance to the subject matter:

- Bill of 29 November 2001 modifying article 90ter of the Criminal Procedure Code (this bill included corruption offences in the list of offences for which telecommunication interception is possible in the course of the investigation) (*Moniteur belge*: 7 February 2003);
- Bill of 8 April 2002 concerning the anonymity of witnesses (MB: 31 May 2002);
- Bill of 7 July 2002 concerning the protection of witnesses (MB: 10 August 2002);
- Bill of 19 December 2002 extending the possibilities of seizure and confiscation (MB: 14 February 2003);
- Bill of 6 January 2003 concerning the special investigation techniques (MB: 12 May 2003);
- Bill of 26 March 2003 creating the Central Office for Seizure and Confiscation (MB: 2 May 2003).

***Other information***

*Relevant authorities*

1. Relevant authorities to whom one may report information on a bribery offence, are the local and federal police, the public prosecution authorities and the investigating judges.

2. Central authority for mutual legal assistance:

Ministry of Justice  
Boulevard de Waterloo 115  
1000 Brussels  
BELGIUM



3. Other relevant authorities:

- Federal Prosecution Service (Rue aux laines 66, boîte 1, 1000 Brussels)
- Central Organ for Seizure and Confiscation (Rue aux laines 66, boîte 1, 1000 Brussels)
- Anti-Money Laundering Office (Avenue de la Toison d'Or, 55 boîte 1, 1060 Brussels)
- Central Bureau for the fight against corruption (special federal police Unit) (Rue du Noyer, 211, 1000 Brussels)

*Relevant Internet links to national implementing legislation*

- Ministry of Justice: <http://www.just.fgov.be>
- Moniteur belge: <http://www.ejustice.just.fgov.be/cgi/welcome.pl>
- Central Organ for Seizure and Confiscation: <http://www.confiscaid.be>
- Anti-Money Laundering Office: <http://www.ctif-cfi.be>
- Federal Police: <http://www.polfed.be>

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (October 1999)

<http://www.oecd.org/dataoecd/13/7/2385130.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (October 2005)

<http://www.oecd.org/dataoecd/59/8/35461651.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (January 2008)

<http://www.oecd.org/dataoecd/50/2/41369400.pdf>



## **BRAZIL**

*(Information as of 6 June 2011)*

### ***Date of deposit of instruments of ratification/acceptance or date of accession***

Signing of the Convention: 17 December 1997.

Ratification of the Convention: June 15, 2000, by Legislative Decree no. 125/2000, published in the Official Federal Gazette ratifying the convention.

### ***Implementing Legislation***

**Identification of the law** - Law no 10.467, June 11, 2002, adding Chapter II-A to Section XI of Decree-Law No. 2,848, of December 7, 1940, Penal Code, and a provision to Law No. 9,613, of March 3, 1998, which governs the crimes of money-laundering or hiding of assets, rights and securities; the prevention of the use of the Financial System for the illegal acts provided for in this Law, creates the Council for **Financial Activities Control** (COAF), and makes other provisions.;

- a) Sanctioning of the implementing legislation: June 10, 2002; and,
- b) Implementing legislation comes into force: June 11, 2002.
- c) Interpretive Declaratory Act 32 – Published by the Federal Internal Revenue Department in order to expressly establish the non tax-deductibility of expenses related to payments or compensation for the commission of offences, or related in any way to such offences, in particular those set forth in Article 1 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions, for purposes of calculating Income Tax and Social Contribution on Net Profit obligations.

### ***Other relevant laws, regulations and decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

#### ***Relevant legislation:***

- Penal Code, especially Art. 317 (passive corruption); Penal Code, Art. 333 (active corruption);
- Law N°. 9.034, May 3, 1995, which adopts provisions concerning the use of operational means for the prevention and repression of activities performed by criminal organizations;
- Law N° 9.613, March 3, 1998, which rules on the crimes of money laundering or hiding assets, rights and securities; the prevention of the use of the Financial System for the illegal acts provided for in this Law, creates the Financial Activities Control Board (COAF), and makes other provisions;
- Decree N° 3.000, March 26, 1999. Income Tax Regulation;
- Law N° 8.884, June 11, 1994, which adopts provisions concerning prevention and repression of violations against the economic order, guided by the constitutional principles of freedom of initiative, free competition, social function of ownership, consumer protection, and repression of economic power abuse;

- Article 11 of Law N°. 7.492/86, which establishes a sentence of 1 (one) to 5 (five) years in prison and a fine for any person who "maintains or transfers resources or values in parallel to the legal accounting requirements";
- Article 1 of Law N° 4.729/1965 establishes as a crime punishable with 6 (six) months to 2 (two) years in prison the falsification of accounting documents.
- Decree 5.483, of June 30, 2005, which instituted the investigation of assets in the scope of the Federal Executive.
- Bill of Law n° 7710/2007, which proposes alteration of the Article 337 – B of Penal Code, increasing imprisonment from 1 to 8 years to 2 to 12 years.
- Draft Bill 6826/2010 – On 8 February 2010, a Draft Bill establishing the direct liability of legal persons for acts of corruption committed against the National and Foreign Public Administration was submitted to Congress, by the President of the Republic. The Draft Bill 6826/2010 was a joint effort of the Office of the Comptroller General and the Ministry of Justice, along with inputs from other relevant governmental bodies. Beyond fulfilling the recommendation to establish the direct liability of legal persons for bribery of foreign public officials, the proposal fills a gap identified in the Brazilian system regarding the liability of legal persons for illicit acts committed against the National Public Administration in the three branches of government – Executive, Legislative and Judicial – and at every level of the Federation (Union, states, Federal District and municipalities), in particular acts of corruption and fraud in public procurement procedures and contracts executed with the Public Administration. The Bill establishes a comprehensive system to suppress acts of corruption committed by enterprises in Brazil and abroad by providing for administrative and civil mechanisms to establish liability and a uniform system throughout the country, with a view to strengthening the fight against corruption in accordance with the unique features of the Brazilian federal system.  
(See [www.camara.gov.br/internet/sileg/Prop\\_Detalhe.asp?id=466400](http://www.camara.gov.br/internet/sileg/Prop_Detalhe.asp?id=466400))
- Approval of a Statement of Commitment for Exporters:

The Council of Ministers of the Chamber of Foreign Trade (CAMEX) enacted Resolution 62, of 17 August 2010, which condition the official Brazilian support to exportation through financing or refinancing for exports, interest rate equalization, export credit insurance or any other combination of these modalities, to the signature of the Statement of Commitment for Exporters.

Through the Statement of Commitment for Exporters, the exporter declares, under penalty of law, among others, that the exporter is aware of Brazil's adhesion to the OECD Convention (Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions, signed in Paris on 17 December 1997); that he/she is aware of articles 337-B and following of the Brazilian Penal Code which establish bribery of foreign public officials as a criminal offence; that the exporter is aware that, in the event the exporter, or any person acting on behalf of the exporter or in his/her interest or benefit, is held liable for the commission of the act of promising, offering or giving, directly or indirectly, any undue advantage to a foreign public official in an international commercial transaction, the exporter shall be subject to loss of public export financing.

An entire version of the document can be accessed in English, at <http://www.cgu.gov.br/ocde/publicacoes/index.asp> .

## ***Other information***

### ***Relevant authorities***

Attention should be drawn to the articulated and integrated way through which corruption is being tackled in the country today, with the joining of all the state defense agencies in this endeavor.

The Office of the Comptroller General (CGU) acts in all the agencies and entities of the Federal Executive as the central body for internal control and audit, disciplinary action and ombudsman action, having within its structure the Secretariat for Prevention of Corruption and Strategic Information - SPCI.

The Federal Police Department (DPF) is responsible for prevention and repression of criminal offenses, as well as for conducting the pertinent investigations, relying on a modern and functional structure that allows centralized planning, coordination and control and decentralized execution.

The Department of Asset Recovery and International Legal Cooperation - DRCI, of the Ministry of Justice, has the function of identifying threats, defining effective and efficient policies, as well as developing an anti-money laundering culture, aiming at recovering assets sent abroad illegally and products of criminal activities. This Department is also responsible for international cooperation and technical assistance, both in penal and civil matters, being the central authority in the exchange of information and requests for international legal cooperation.

The Council of Control of Financial Activities – COAF, the Brazilian financial intelligence unit, was created in the scope of the Ministry of Finance, with the purpose of disciplining, enforcing administrative penalties, receiving, examining and identifying suspected illegal activity linked to money laundering.

The Brazilian Federal Revenue Secretariat, a specific and unique body linked to the Ministry of Finance, is responsible for the planning, execution, control and evaluation of the federal tax administration activities, as well as the execution of the country's customs policy, including the undertaking of studies on the economic impact of the tax and customs policies in Brazil.

The Prosecutor's Office is a permanent institution, which has functional, administrative and financial autonomy established in the Constitution, being responsible for persecution of offences.

The Legislative also has an important role in the fight against corruption, not only in its law-making function, but mainly through Parliamentary Inquiry Commissions - CPI. The CPIs, with the same investigation powers as the judicial authorities, are instituted by the House of Representatives or by the Federal Senate, with the purpose of investigating a certain fact within an established deadline and its conclusions are forwarded to the Prosecutor's Office, if appropriate, for it to promote the civil or criminal liability of the offenders.

External control, which is the responsibility of the National Congress, is exercised with the help of the Federal Court of Accounts, whose attributions include, for example, judging the accounts of the managers and other people responsible for public moneys, property and values of the direct and indirect administration, including foundations and societies instituted and maintained by the Federal Public Power, and the accounts of those who have caused loss, misuse or any other irregularity results in loss to the treasury.

The articulation and coordination of the works developed by the above bodies and others were strengthened by the creation of the National Strategy to Combat Corruption and Money Laundering – ENCCLA, in 2003. At the conclusion of its seventh annual meeting of 20 November 2009, the National Strategy to Combat Corruption and Money – ENCCLA formally announced the Brazilian Anticorruption

Strategy (Estratégia Brasileira Anticorrupção). The Office of the Comptroller General (Controladoria-Geral da União – CGU), author of the original proposal, will continue to serve as a full member of ENCCLA and to oversee ongoing anticorruption measures throughout 2010 during its transition out of the coordination of the entity.

The ultimate objective of the initiative is to formulate a Brazilian anticorruption policy rooted in the understanding that corruption must be addressed in a comprehensive and in-depth manner. In this light, the purpose of the Strategy is to approach corruption as a risk (not as a legacy), reinforcing the strategic aspect of the effort and putting in place a specific public policy.

However, both the anti-money laundering and anticorruption communities will continue to maintain extensive communications, providing ongoing feedback to their efforts. As a first step in the Brazilian Anticorruption Strategy, the Comptroller's Office will consolidate the initiatives of the Brazilian State in the area, undertaking to coordinate the related activities, including the collection of inputs from other participants, the development of the proposal and mediation of the respective discussions.

*Relevant Internet links to national implementing legislation:*

<http://www.cgu.gov.br>;  
<http://www.camara.gov.br>;  
<http://www.senado.gov.br>;  
<http://www.mpf.gov.br>;  
<http://www.mj.gov.br/drci>;  
<https://www.coaf.fazenda.gov.br>;  
<http://www.receita.fazenda.gov.br>;  
<http://www.tcu.gov.br>.

*Signature/Ratification of other relevant international instruments*

- Promulgation of the Inter-American Convention against Corruption (OAS). Decree no 4.410, 7 October 2002;
- Signature of the United Nations Convention against Corruption (UN), on 9 December 2003, at Mérida, México;
- Promulgation of the United Nations Convention against Corruption (UN). Decree no 5.687, 31 January 2006.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (September 2004)

<http://www.oecd.org/dataoecd/52/46/33742137.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (December 2007)

<http://www.oecd.org/dataoecd/61/30/39801089.pdf>

Phase 2 Follow-up report on the implementation of the Phase 2 Recommendations on the application of the Convention and the 1997 revised recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (June 2010)

<http://oecd.org/dataoecd/50/39/45518279.pdf>

## **BULGARIA**

*(Information as of 15 February 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Bulgaria deposited its instrument of ratification on 22 December 1998. The Convention entered into force on 15 February 1999. The text of the Convention (Bulgarian translation) was promulgated in “State Gazette” No 61 of 6 July 1999.

### ***Implementing legislation:***

#### **Criminal Code** (State Gazette No. 26/2.04.1968)

- Amendment of 15 January 1999 (prom. in SG No 7 of 26 January 1999) whereby the active bribery of foreign public officials in international business transactions was criminalised (Art.304, para. 3 of the Criminal Code). An autonomous definition of “foreign public official” (Art.93, para. 15 of the Criminal Code) has been introduced.
- Amendment of 8 June 2000 (prom. in SG No 51 of 23 June 2000) whereby promising and offering of a bribe to domestic and foreign public officials (phase 1 OECD Working Group’s recommendation) were established as a criminal offence. By the same amending law the restriction as to the context in which the active bribery of the foreign public officials occurs, i.e. in international business transactions, was abolished.
- Amendment of 13 September 2002 (prom. in SG No 92 of 27 September 2002) which provided for: including non-material advantages in the scope of definition of a bribe (phase 1 OECD Working Group’s recommendation); it introduced also criminalisation of bribery in the private sector, trading in influence, passive bribery of foreign public officials, bribery of arbitrators and, in some specific cases, bribery of lawyers; enlargement of the scope of the foreign public official definition; restriction of the existing defences concerning the punishment of active bribery (phase 1 OECD Working Group’s recommendation); introducing the fine as additional punishment for bribery; and more severe punishments for bribery of judges, jurors, prosecutors and examining judges.
- Amendment of 2010 (SG, 26/2010, in force since April 6th, 2010) by which the scope of persons holding a responsible official position and who can commit active and passive bribery was broadened by explicitly adding «police body» and «police investigative body» in the text of the provisions of art. 302 and art.304 a of the Criminal Code (qualified provisions).

**Criminal Procedure Code** (new, State Gazette No. 86/28.10.2005, effective since 29.04.2006, last amendment SG No. 93/25.11.2011)

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations:***

**Constitution of the Republic of Bulgaria** - According to the last (fourth) amendment of the Constitution (SG No. 12/6.02.2007) the immunity of magistrates from investigation and prosecution (*criminal inviolability*) was removed with regard to deliberate crimes of general nature.

**Law on Administrative Offences and Sanctions** (State Gazette No. 92/28.11.1969) through amendments in this Law (SG No. 79/4.10.2005) the liability of legal persons for a list of criminal offences, including for foreign bribery was introduced. The Law provides for a monetary sanction of up to 1 million Levs (approximately EUR 500 000) but not less than the amount of the advantage obtained or that could have been obtained. Confiscation of the proceeds of crime is also envisaged. The sanctions shall be imposed irrespective of the penal responsibility of the physical perpetrator. The Law regulates also the procedure for imposing sanctions on legal persons.

**Law on the Forfeiture to the State of Proceeds of Crime** (SG No. 19/1.03.2005, last amended SG No. 60/5.08.2011)(civil confiscation) from 2005. This law regulates the terms and procedure for imposition of seizure and forfeiture to the State of any assets derived, whether directly or indirectly, from criminal activity. By this law, the body handling the procedure is the Multidisciplinary Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), which became operational in October 2006.

**Law on Public Procurement** (SG No. 28/ 6.04.2004, effective since 1.10.2004). The law contains explicit provision excluding from the tendering process persons who have been convicted of a number of offences, including bribery. Under Art.47, paragraph 1 (1) of the LPP a candidate who has been convicted of crimes against the financial, tax and insurance system, of bribery and of economic crimes may not participate in the tendering procedure. Where the candidate is foreign individual or foreign legal person he/she/it should meet the requirements of Art.47 in the state of establishment (Art.48, paragraph 1 of the law). In 2006 changes were introduced to all the legislation concerning the public procurement – the Law on Public Procurement, the Rules Implementing the Law on Public Procurement and the Ordinance for Assigning Small Public Procurement, aiming at improving the anticorruption mechanisms in public procurement.

**Law on the Protection of Persons Threatened in Connection with Criminal Proceedings** (SG 103 of 23 November 2004, in force since May 2005). Purpose of the law is to support the fight against grave deliberate crimes such as bribery of foreign by providing safety to persons whose testimony, explanations or information are of vital importance for the criminal procedure. The protection under this law is carried out by including the persons in a special Protection Programme, which is a set of measures applied by the state. Under this law the most essential protective measure may be a full identity change of the protected person.

**Law on the Prevention and Establishment of Conflict of Interest** (SG No. 94/31.10.2008, effective since 1.01.2009, last amended and supplemented, SG No. 97/10.12.2010, effective 10.12.2010). The Law introduced a general term for conflict of interest applicable to a maximum wide range of persons and cases; a specialised Commission dealing with conflict of interest and respective procedures regarding disclosure, audits and imposing responsibility in cases of conflicts of interest. The law provides for special protection for persons reporting for conflict of interest.

**Administrative Procedure Code** (SG No. 30/11.04.2006, effective since 12.07.2006). Its art. 107 stipulates that proposals and signals about abuse of power and corruption submitted to administrative authorities, as well as to other authorities covered by the public law, shall be considered according to the procedure established by its provisions.

**Law on corporate income taxation** (SG No. 105/22.12.2006, effective since 1.01.2007, last amended SG No. 77/4.10.2011) The provisions of art.10 and art. 26 of the cited law introduce a general prohibition for definite types of expenses (non-documentarily grounded) to be recognised for tax purposes by the tax authorities.

**Law on the Independent Financial Audit** (SG No. 101/23.11.2001, last amended SG No. 99/16.12.2011) and **Law on the Public Sector Internal Audit** (prom. State Gazette, No. 27/31.03.2006, last amended SG No. 98/13.12.2011)

**Law on the Measures Against Money Laundering** (SG No. 85/24.07.1998, last amended, SG No. 96/6.12.2011)

### ***Other information***

#### *Relevant authorities*

Under Art. 205, para 1 of the Criminal Procedure Code, information on criminal offences, including on bribery offences, should be reported to the bodies of the pre-trial proceedings, i.e. prosecutors, investigators at the Ministry of Interior, or to other public body.

#### *Central authorities for mutual legal assistance:*

- Ministry of Justice - in respect of MLA requests at the stage of the trial (1, Slavianska Str., 1040 Sofia, Bulgaria)
- Supreme Cassation Prosecutor's Office - in respect of MLA requests at the stage of pre-trial proceedings, (2, Vitosha Bulvd., 1040 Sofia, Bulgaria)

#### *Other relevant authorities:*

- **The Commission for establishing of property acquired from criminal activity** (112 Rakovski Str., 1040 Sofia)
- Commission for Prevention and Counteraction against Corruption (set up by Decision No 61 of the Council of Ministers from 02.02.2006)
- Center for Prevention and Counteraction of Corruption and Organized Crime (BORKOR) (established by Ordinance of Council of ministers of July 29th 2010)
- Committee “Professional ethics and prevention of corruption” within the Supreme Judicial Council
- Committee on anti-corruption, conflict of interests and parliamentary ethics within the National Assembly

#### *Relevant internet links to national implementing legislation*

Ministry of Justice: <http://www.justice.government.bg>

Commission for Prevention and Counteraction against Corruption: <http://anticorruption.government.bg>

All Bulgarian Legislation (free access): <http://www.lex.bg>

#### *Signature/Ratification of other relevant international instruments*

- Council of Europe Criminal Law Convention on Corruption: ratified on 7 November 2001;



- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption on 4 February 2004;
- Council of Europe Civil Law Convention on Corruption: ratified on 8 June 2000;
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime: ratified on 2 June 1993;
- United Nations Convention against Corruption: ratified on 3 August 2006;
- United Nations Convention against Transnational Organized Crime: ratified on 12 April 2001;
- EU Convention on the Protection of the European Communities' Financial Interests and the Protocols thereto: ratified on 24 January 2007;
- EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States: ratified on 14 February 2007.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/13/53/2385450.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/8/19/2790505.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions

<http://www.oecd.org/dataoecd/35/60/36101867.pdf>

Phase 3: Report on the application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/16/20/47468296.pdf>

## CANADA

(Information as of May 2008)

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Canada ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention) on 17 December 1998.

### ***Implementing legislation***

Canada's implementing legislation, the *Corruption of Foreign Public Officials Act* (CFPOA) received Royal Assent on 10 December 1998 and came into force on 14 February 1999. Subsequent amendments were made to the Act in January 2002 as a consequence of amendments to Canada's *Criminal Code*. These amendments are of a technical nature.

The *Corruption of Foreign Public Officials Act* implements Canada's obligations set out in the Convention. The main offence of bribery of foreign public officials represents an effort to marry the Convention wording and requirements with wording that was found already in the corruption provisions of the *Criminal Code*. The Act calls for an annual report by the Minister of Foreign Affairs, the Minister of International Trade, the Minister of Justice and the Attorney General of Canada on the implementation of the Convention and on the enforcement of the Act.

The offences under the *Corruption of Foreign Public Officials Act* are included in the list of offences under section 183 of the *Criminal Code*. As a result, it is possible for police, through the lawful use of a wiretap and other electronic surveillance, to gather evidence in the bribery of foreign public officials cases, and in the possession and laundering of proceeds from these cases.

The *Corruption of Foreign Public Officials Act* requires the Minister of Foreign Affairs, the Minister of International Trade, and the Minister of Justice to provide information on the enforcement of the Act and the implementation of the Convention in an Annual Report to Parliament.

The Corruption of Foreign Public Officials Act may be found at:

<http://laws.justice.gc.ca/en/showtdm/cs/C-45.2?noCookie>

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

#### ***Income Tax Act***

A payment that constitutes an offence under the *Corruption of Foreign Public Officials Act* is included in the list of expenses for which a deduction is denied under subsection 67.5(1) of the *Income Tax Act*.

The *Income Tax Act* may be found at: <http://laws.justice.gc.ca/en/i-3.3/text.html>

## *Criminal Code*

The *Criminal Code* includes provisions that codify and modernize the Canadian criminal law in relation to corporate criminal liability. In particular, these provisions:

- a) establish rules for attributing to organizations, including corporations, criminal liability for the acts of their representatives (section 22.2);
- b) set out factors for courts to consider when sentencing an organization (section 718.21); and
- c) provide optional conditions of probation that a court may impose on an organization (section 732.1).

Since 2005, the *Criminal Code* includes an offence, for an employer, of threatening employees in order to prevent them to disclose unlawful conduct, or retaliating against them for doing so (section 425.1).

Provisions against domestic corruption are found in the *Criminal Code*, including sections 119 to 121 (bribery of Canadian officials and frauds on the government), 123 to 125 (municipal corruption and selling or influencing appointments to office), and 426 (secret commissions by an agent).

The *Criminal Code* may be found at: <http://laws.justice.gc.ca/en/c-46/text.html>

## *Federal Accountability Act*

This Act was passed in December 2006. It provides for increased accountability of public servants and further measures to prevent domestic corruption, including: creating new fraud offences for public servants; reinforcing accounting within government departments by making accounting officers and internal audit committees mandatory; appointment of a Public Sector Integrity Officer and creation of a tribunal to deal with disclosure in the public sector; creation of a Procurement Ombudsman to review complaints from government suppliers; a legislated Code of Conduct for federal politicians and senior officials; lowering the limit for political contributions; making more Crown corporations subject to the *Access to Information Act*; and creating a Public Prosecution Service separate from the Department of Justice and providing for public disclosure of instructions given by the Attorney General in a specific case.

The Federal Accountability Act can be found at:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3294507&file=4>

## *Public Servants Disclosure Protection Act (PSDPA)*

The PSDPA provides legislated processes for reporting wrongdoing and strong legislated reprisal protections for employees who make disclosures. Employees can choose to make a disclosure to a senior officer within their own organization, or they can make a disclosure directly to the Public Sector Integrity Commissioner. The Public Sector Integrity Commissioner is a neutral third party, reporting directly to Parliament.

The Public Servants Disclosure Protection Act can be found at:

<http://laws.justice.gc.ca/en/showtdm/cs/P-31.9?noCookie>

### ***Relevant authorities***

The Public Prosecution Service of Canada.

The Royal Canadian Mounted Police.

### ***Signature/Ratification of other relevant international instruments***

- Inter-American Convention Against Corruption
- Signed: 7 June 1999
- Ratified: 1 June 2000
- United Nations Convention against Transnational Organized Crime
- Signed: 14 December 2000
- Ratified: 13 May 2002
- United Nations Convention against Corruption
- Signed: 21 May 2004
- Ratified: 2 October 2007

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (July 1999)

<http://www.oecd.org/dataoecd/13/35/2385703.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2004)

<http://www.oecd.org/dataoecd/20/50/31643002.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (June 2006)

<http://www.oecd.org/dataoecd/5/6/36984779.pdf>

## CHILE

(Information as of May 2012)

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Chile signed the Convention on December 17th, 1997 and deposited its instrument of ratification with the OECD Secretary-General on April 18th, 2001. The Convention entered into force for Chile internationally on June 18th, 2001 pursuant to article 15.2 of the Convention.

### ***Implementing legislation***

**Executive Decree No. 496**, of October 10th 2001, of the Ministry of Foreign Affairs, was published in the Official Gazette on January 30th 2002, date on which the Convention was enacted in Chile.

**Law No. 20,341** of April 22nd, 2009

(<http://www.leychile.cl/Navegar?idNorma=1001365&buscar=ley+20341>)

amends the offence of foreign bribery and related sanctions. It has created a new Chapter 9bis dedicated to foreign bribery, repealing articles 250bisA and 250bisB of the Criminal Code. Both articles, which had been added to the Criminal Code by Law No. 19,829 in 2002, as part of the implementing legislation, have been replaced with new articles 251bis and 251ter in Chapter 9bis<sup>1</sup> of the Criminal Code. Law 20.341 completes the offense of bribery of foreign public officials so that now it includes the three verbs required by the Convention: to offer, to promise and to give, thus extending its previous wording which stated: "*he who offers to give...*" It establishes that the foreign bribery offence can apply to bribes composed of non-pecuniary benefits. It increases the sanctions for the offence, in order that they shall be effective, proportionate and dissuasive, which additionally allows Chile to grant the extradition in entire agreement with the Convention. It replaces the concept of "*international business transactions*" by "*international transactions*". It also replaces the term "*public service enterprise*" by "*public enterprise*".

The current version of the offence of foreign bribery is as follows:

### **"§ 9bis. Bribery to Foreign Public Officials"**

**"Section 251bis.** He who offers, promises or gives a foreign public official an economic or other nature benefit, for that official or a third person, for acting or incurring in an omission in order to obtain or retain – for him or a third party – a business or an improper advantage in the field of any international transactions shall be punished with short-term confinement, medium to maximum degree, and with the fine and disqualification referred to in section 248bis, indent one. Should the benefit have a non-economic nature, the fine will range from one hundred to one thousand monthly tax units. The same penalties shall be imposed on he who offers, promises or gives the said benefit to a foreign public official for having acted or having incurred in the referred acting or omission.

He who, in the same situations described in the above indent, consents to give the said benefit, shall be sanctioned with short term confinement, from minimum to medium degree, besides the same penalties of fine and disqualification.

<sup>1</sup>

Bribery of Chilean officials and bribery of foreign public officials are now in two separate chapters because the former aims to protect public administration and the latter aims to protect international business transactions.

**Section 251 ter.-** For the purposes of the provisions of the preceding article, it is considered a foreign public official any person holding a legislative, administrative or judicial office in a foreign country, whether appointed or elected, and any person holding a public office for a foreign country, either within a public body or a public company. It shall also mean any official or agent of a public international organization”.

**Law 20,371** of August 25th, 2009

<http://www.leychile.cl/Navegar?idNorma=1005392&buscar=20.371> amends the Organic Court Code introducing jurisdiction over active bribery of foreign public officials committed abroad by Chilean nationals, or foreigners who habitually reside in Chile.

**Law No. 20,393** of December 2<sup>nd</sup> 2009,

(<http://www.leychile.cl/Navegar?idNorma=1008668&buscar=ley+20393>) which introduces criminal responsibility of legal persons for the offenses of bribery of Chilean and foreign public officials, money laundering, and financing of terrorism.

***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or Recommendations***

**Law No. 19,913** of December 18th, 2003

<http://www.leychile.cl/Navegar?idNorma=219119&buscar=19913> established the Financial Analysis Unit (FAU), a decentralized public service with legal status, which relates with the President of the Republic through the Ministry of Finance.

**Circular Letter No. 48**, published on April 19th, 2012 which instructs the financial system on measures about Politically Exposed Persons (PEP), is aimed to fight corruption among public high level officials. This Circular Letter was jointly issued by the Financial Analysis Unit (UAF); the Banks and Financial Institutions Superintendence (SBIF); the Securities and Insurance Superintendence (SVS); and the Pensions Superintendence (SP). [http://www.uaf.cl/legislacion/norm\\_sector.aspx](http://www.uaf.cl/legislacion/norm_sector.aspx)

**Law No. 20.205** of September 24th, 2007

<http://www.leychile.cl/Navegar?idLey=20205> regulates the protection of the civil servants who report in good faith to the regular authorities, that an act has been committed by a public official, which constitutes misconduct to probity. It also establishes sanctions for those who do frivolous or of bad faith reports.

**Circular Letter No. 56**, dated November 8th, 2007 - published in extract in the Official Gazette of November 16th, 2007 - on "*Payments of Bribes or Bribes to Foreign Public Officials in International Business Transactions. Inadmissibility to consider them as Necessary Expenses to produce Income. Article 31 of the Income Tax Law*", was published in extract in the Official Gazette of November 16th, 2007 and is available in the web site of the Internal Revenue Service: <http://www.sii.cl/documentos/circulares/2007/circu56.htm> This document which reinforces the explicit nature of the prohibition of the tax deduction of the foreign bribe, is nowadays in force and in full application.

The Ministry of Finance has issued the **Executive Decree No. 1,763** of December 26th 2008, published on October 6th, 2009, <http://www.leychile.cl/Navegar?idNorma=1006943> which amends the Regulations of the Law on Public Procurement and Contracting. Paragraph 31 of the Single Article of the mentioned Executive Decree disables the enrolment in the State Registry of Suppliers to those who

have been convicted for domestic bribery and foreign public officials' bribery. The inability will last for a period of 3 years.

On August 23rd 2010, the National Prosecutor sent **Circular Letter 440/2010** to prosecutors, legal advisors and lawyers of the National Prosecutor's Office, containing a General Instruction, establishing common criteria to guide the investigation and penal prosecution of legal persons.

By virtue of Law 20.393 on criminal responsibility of legal persons, regulations for agencies that rate crime prevention schemes were introduced. Accordingly, the Chilean Superintendence of Securities and Insurance (SVS) issued **General Rule 302 of 2011**, [http://www.svs.gob.cl/normativa/ncg\\_302\\_2011.pdf](http://www.svs.gob.cl/normativa/ncg_302_2011.pdf) in which registration requirements for such agencies were established. Under this rule, the aforementioned agencies have to be registered before the SVS in order to issue any ratings of this nature and as such, they are only allowed to certify crime prevention models related to money laundering, bribery and financing of terrorism. Currently, there are 5 of these agencies registered before the SVS.

By **Rule 638 of 2010**, [http://www.svs.gob.cl/normativa/ofc\\_638\\_2010.pdf](http://www.svs.gob.cl/normativa/ofc_638_2010.pdf) with the purpose of strengthening the role of external audits in the prevention of bribery, and in accordance with the OECD "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions", the Chilean Superintendence of Securities and Insurance required from such audits ongoing information regarding the existence of best practices, internal procedures and any other measures adopted to improve their crime prevention role.

*Agreements signed by Chile as from the year 2007, related to mutual legal assistance*

Agreement on the Benefit of no Fee Litigation and Free Legal Assistance, among the Parties to MERCOSUR, the Republic of Bolivia, and the Republic of Chile. Promulgated by Decree No 142, issued by the Ministry of Foreign Affairs, on August 13th, 2007. Signed on December 15th, 2000, among the Republic of Argentina; the Federative Republic of Brazil; the Republic of Paraguay; the Oriental Republic of Uruguay; the States Parties to MERCOSUR; the Republic of Bolivia and the Republic of Chile. <http://www.leychile.cl/Navegar?idNorma=265927>

Agreement on Cooperation and Jurisdictional Assistance in Civil, Commercial, Labor and Administrative Matters, among the States Parties to MERCOSUR; the Republic of Bolivia and the Republic of Chile. Promulgated by Decree No. 71, issued by the Ministry of Foreign Affairs on April 24th, 2009. Adopted on July 5th, 2002, among the Republic of Argentina; the Federative Republic of Brazil; the Republic of Paraguay; the Oriental Republic of Uruguay, - States Parties to the Southern Common Market (MERCOSUR) - the Republic of Bolivia and the Republic of Chile. <http://www.leychile.cl/Navegar?idNorma=1004873>

Agreement on Mutual Legal Assistance in Criminal Matters among the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile. Promulgated by Decree No. 78, issued by the Ministry of Foreign Affairs on May 7th, 2009. Adopted on February 18, 2002, among the Republic of Argentina; the Federative Republic of Brazil; the Republic of Paraguay; the Oriental Republic of Uruguay; - States Parties to the Southern Common Market (MERCOSUR) - the Republic of Bolivia and the Republic of Chile. <http://www.leychile.cl/Navegar?idNorma=1007256>

International Convention for the Suppression of Acts of Nuclear Terrorism. Promulgated by Decree No 252, issued by the Ministry of Foreign Affairs on October 13th, 2010. Adopted by the General Assembly



of the United Nations on April 13th, 2005, in New York, USA  
<http://www.leychile.cl/Navegar?idNorma=1024890>

Treaty on Legal Assistance in Criminal Matters between the Republic of Chile and the Italian Republic. Promulgated by Decree No 50, issued by the Ministry of Foreign Affairs on March 31st, 2011. Signed in Rome on February 27th, 2002. <http://www.leychile.cl/Navegar?idNorma=1029289>

European Convention on Mutual Assistance in Criminal Matters, its additional Protocol and its Second Additional Protocol. Promulgated by Decree No 112, issued by the Ministry of Foreign Affairs, on August 18th, 2011. Signed in Strasbourg on April 20th, 1959.  
<http://www.leychile.cl/Navegar?idNorma=1038242>

Agreement on Extradition among the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile. Promulgated by Decree No 35 issued by the Ministry of Foreign Affairs on February 17th, 2012. Signed on December 10th, 1998, in Rio de Janeiro, Federative Republic of Brazil, among the States Parties to MERCOSUR, the Republic of Bolivia and the Republic of Chile.  
<http://www.leychile.cl/Navegar?idNorma=1039217>

### ***Other information***

#### Relevant authorities

- Dirección Asuntos Jurídicos Ministerio Relaciones Exteriores

Teatinos 180, piso 16, Santiago, Chile

Tel: 562 8274237 – 562 8274238 – 562 3801402

Fax: 562 3801654

(Central authority in regard to legal assistance {article 9} and extradition requests {article 10})

- Unidad Relaciones Internacionales y Cooperación Ministerio de Justicia

Morandé 107, piso 7, Santiago, Chile

Tel: 562 – 6743286

Fax: 562 6743284

(Central authority in regard to consultations related to jurisdiction {article 43})

- Consultations on reporting, and monitoring of these offence's reports should be done to the Specialized Anti-Corruption Unit of the National Prosecutor's Office.

General Mackenna N° 1369, piso 3, Santiago, Chile.

Tel: 562 – 9659552

Fax: 562 - 9659567

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (August 2004)

<http://www.oecd.org/dataoecd/52/45/33742154.pdf>



Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (October 2007)

<http://www.oecd.org/dataoecd/38/10/39540391.pdf>

Phase 1bis: Review of implementation of the Convention and 1997 Recommendation (October 2009)

<http://www.oecd.org/dataoecd/62/32/43902840.pdf>

Phase 2: Follow-up Report on the implementation of the Phase 2 Recommendations (October 2009)

<http://www.oecd.org/dataoecd/8/12/44130051.pdf>

Phase 1ter: Review of implementation of the Convention and 1997 Recommendation (December 2009)

<http://www.oecd.org/dataoecd/60/12/44254056.pdf>

## **CZECH REPUBLIC**

*(Information as of 30 September 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of ratification was deposited with the Secretary-General of the OECD on 21 January 2000. The Convention entered into force internally on 21 March 2000 and was published by the Ministry of Foreign Affairs as No. 25/2000 of the Collection of International Treaties.

(Czech translation of the Convention: <http://mvcr.iol.cz/sbirka/2000/sb013-00m.pdf>)

### ***Implementing legislation***

- Act No. 96/1999 Coll., amendment to the Criminal Code (Act No. 140/1961 Coll., Criminal Code, as amended). This amendment introduced a new provision of Section 162a, which includes the definition of a bribe, as developed by the judiciary, and a definition of foreign public official, which implements definitions pursuant to Article 1 paragraph 4 of the Convention. These concepts apply to general bribery offences that are stipulated in Sections 160 – 162 of the Criminal Code. Maximum penalty for aggravated active bribery (Section 161 paragraph 2) was increased from 3 to 5 years of imprisonment. All criminal offences, including corruption offences, are predicate offences for purposes of application of legislation against money laundering.

This amendment entered into force on 9 June 1999.

- Act No. 492/2000 Coll., amendment to the Income Tax Act (Act No. 586/1992 Coll., as amended). This amendment introduced explicit prohibition of tax deductibility of bribes paid to foreign public officials pursuant to Article IV of the Revised Recommendation.

This amendment entered into force on 1 January 2001.

- Auditors Act No. 254/2000 Coll., as amended, introduced a duty of the auditors to immediately, in writing, notify statutory and supervisory boards of the accounting unit of any detected facts, which may fall under corruption offences.

This law entered into force on 1 January 2001.

- Amendment No. 353/2001 Coll. to Act on Accounting explicitly prohibited off-the-book accounts and off-the-book transactions and increased fines for accounting offences.

This amendment entered into force on 1 January 2002.

- Amendment No. 473/2003 Coll. to Act on Accounting (No. 561/1991 Coll., as amended), introduced international accounting standards (IAS) for consolidated accounts and also for annual accounts for companies whose securities are publicly traded.

This amendment was entered into force on 1 January 2004.

***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

As recommended during the Phase 1 Reviews, the Czech Republic enacted legislation explicitly denying the tax deductibility of bribes paid to foreign public officials. At present, the Czech authorities are engaged in the process of drafting a new Criminal Code. The law on criminal liability of legal persons designed to implement part of the obligations stipulated by the Convention has been rejected by the Parliament. Therefore the Czech government is currently reconsidering the options for implementation of relevant obligations.

Pursuant to Phase 2 Recommendations several changes to current legislation were drafted and adopted:

- Criminal Code (no. 140/1961 Coll.) - changes to Criminal Code were drafted as Chamber of Deputies' printout 248 - electoral term 2006-2010 - and adopted and issued as act no. 122/2008 Coll.

“effective regret”

- a sentence was added to Section 163 of the Criminal Code which excludes the defence of “effective regret” from the offence of foreign bribery;

money laundering

- punishment for money laundering was increased up to 10 years of imprisonment and forfeiture;

false accounting

- punishment for the offence of false accounting was increased up to 8 years of imprisonment and the possibility to impose a fine on the perpetrator was introduced;

punishment and definition of officials

- punishment for bribery offences was increased and the definition of foreign public official was modified.

The relevant parts of the Criminal Code read as follows:

Division 3

Bribery

Section 160

Passive Bribery

1. Whoever in connection with procuring affairs in the public interest accepts a bribe or the promise of a bribe shall be sentenced to imprisonment for up to 3 years or to prohibition of activity.
2. Whoever under the circumstances given in paragraph 1 asks for a bribe shall be sentenced to imprisonment for 6 months to 5 years or to prohibition of activity.

3. An offender shall be sentenced to imprisonment for 2 to 8 years or monetary punishment if he commits the act given in paragraph 1 or 2
  - a) with the intent of procuring a substantial benefit for himself or for another person; or
  - b) if he commits such act as a public official.
4. An offender shall be sentenced to imprisonment for 5 to 12 years, if he commits the act given in paragraph 1 or 2
  - a) with the intent of procuring a major benefit for himself or for another person; or
  - b) if he commits such act as a public official with the intent of procuring a substantial benefit for himself or for another person.

#### Section 161

##### Active Bribery

1. Whoever in connection with procuring affairs of public interest provides, offers or promises a bribe, shall be sentenced to imprisonment for up to 2 years or to a monetary punishment.
2. A perpetrator shall be sentenced to imprisonment for 1 to 5 years or to a monetary punishment
  - a) if he commits the act given in paragraph 1 with the intent of procuring a substantial benefit for himself or for another person or of inflicting substantial damage or other particularly serious consequences to another person; or
  - b) if he commits the act given in paragraph 1 vis-à-vis a public official.

#### Section 162

##### Trading in Influence

1. Whoever requests or accepts a bribe for exerting his influence on the execution of the authority of a public official or for having done so, shall be sentenced to imprisonment for up to 3 years.
2. Whoever shall provide, offer or promise a bribe to another person for the reason given paragraph 1 shall be sentenced to imprisonment for up to 2 (instead of 1) years or a monetary punishment.

#### Section 162a

##### Joint Provision

1. A bribe means an unwarranted advantage consisting in direct material enrichment or other advantage received or having to be received by the person bribed or with its consent to another person, and to which there is not entitlement.
2. A public official pursuant to § 160 to 162 means, besides the persons referred to in section 89, par. 9, also any person
  - a) occupying a post in a legislative or judicial authority or the public administration of a foreign country, or
  - b) occupying a post in an international judicial body,

- c) occupying a post, being employed or hired by an international or supranational organisation, established by countries or other entities of international public law, or in its bodies and institutions, or
- d) occupying a post in an enterprise, in which Czech Republic or a foreign country has the decisive influence,

if the execution of such a function is connected with authority in procuring the affairs of public interest and the criminal offence was committed in conjunction with such authority.

3. Procurement of affairs in public interest also means maintaining the duty imposed by legal regulations or a contract whose purpose is to ensure that there is no abuse or unjustified advantage of participants in business relations or persons acting on their behalf.

#### Section 163

##### Special Provision on Effective Repentance

The punishability of passive bribery (sec. 161) and active bribery (sec. 162) shall disappear if the offender has provided or promised a bribe solely because he/she has been requested to do so and reported the fact voluntarily and without any delays to the prosecutor or police authority; this does not apply if the bribe has been provided or promised in connection with execution of the authority of public official as referred to in sec. 162a par 2 letters a) to c) or letter d), as far as public official occupying a post in an enterprise, in which a foreign country has a decisive influence, is concerned

This amendment entered into force on 1 of July 2008.

Code of Criminal Procedure (no. 141/1961 Coll.)

Chamber of Deputies' printout 360 - electoral term 2006-2010 - issued as act no. 135/2008 Coll. enables to use a police agent when monitoring, investigating and detecting corruption and corrupt activities.

This amendment entered into force on 16 of May 2008.

Administration of Taxes Act (no. 337/1992 Coll.)

- reduction of the duty of confidentiality

Chamber of Deputies' printout 248 - electoral term 2006-2010 - issued as act no. 122/2008 Coll. waives the duty of confidentiality of tax officials in cases of reporting bribery detected during tax audits to law enforcement.

This amendment entered into force on 1 of July 2008.

#### ***Other information***

##### *Relevant authorities*

All criminal offences, including corruption offences, should be reported to the law enforcement authorities (the Police of the Czech Republic or the Public Prosecutor's Offices).

Suspicious of corruption cases in the Police of the Czech Republic should be reported to [stiznosti@mvr.cz](mailto:stiznosti@mvr.cz).

Suspicious of corruption cases in the Czech judiciary should be reported to [korupce@msp.justice.cz](mailto:korupce@msp.justice.cz).

*Relevant Internet links to national implementing legislation (in Czech only)*

Collection of Laws (Sbírka zákonů): <http://beta.mvr.cz/clanek/sbirka-zakonu.aspx>

Chamber of Deputies' printouts and draft legislation (unofficial version but with explanatory reports): <http://www.psp.cz/sqw/tisky.sqw?stz=1>

Ministry of the Interior - fighting corruption website: <http://www.mvr.cz/boj-proti-korupci.aspx>

*Signature/Ratification of other relevant international instruments*

The Czech Republic ratified the Council of Europe Criminal Law Convention on Corruption (8 September 2000) and the Civil Law Convention (24 September 2003).

The second additional protocol to the European Convention on Mutual Assistance in Criminal Matters entered into force on 1 July 2006.

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European union of 29 May 2000 and the Protocol of 16 October 2001 came into force on 12 June 2006.

The United Nations Convention against Corruption has been signed on 22 April 2005.

Since 9 February 2002 the Czech Republic is engaged in GRECO.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (March 2000)

<http://www.oecd.org/dataoecd/13/40/2385959.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (October 2006)

<http://www.oecd.org/dataoecd/3/59/37727436.pdf>

## DENMARK

*(Information as of May 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of ratification was deposited with the OECD Secretary General on 5 September 2000.

### ***Implementing legislation***

The law implementing the Convention is Act no. 228 of 4 April 2000, which amended the Danish Criminal Code. The law came into force 1 May 2000.

One effect of Act no. 228 of 4 April 2000 was that active bribery of foreign public officials and officials of international organisations (OECD, Council of Europe, EU, NATO, UN, etc.) was made a criminal offence equal to bribery of Danish public officials. Furthermore, passive bribery by foreign public officials and officials of international organisations (OECD, Council of Europe, EU, UN, NATO, etc.) was made a criminal offence on equal terms as those applying to Danish public officials. Moreover, responsibility of legal persons (companies, etc.) was introduced as concerns active bribery in the public and private sectors, including liability for active and passive bribery in the public sector. The provision concerning responsibility of legal persons has later been amended. Criminal responsibility can now be imposed on legal persons for all violations of the Criminal Code.

Under Danish law, both active and passive bribery of persons exercising a public office or function is an offence under sections 122 and 144, respectively. The provisions read as follows:

**“Section 122.** Any person who unduly grants, promises or offers some other person exercising a Danish, foreign or international public office or function a gift or other privilege in order to induce him to do or fail to do anything in relation to his official duties shall be liable to a fine or imprisonment for any term not exceeding three years.”

**Section 144.** Any person who, while exercising a Danish, foreign or international public office or function, unduly receives, demands or accepts the promise of a gift or other privilege shall be liable to imprisonment for any term not exceeding six years or, in mitigating circumstances, to a fine.”

The Criminal Code rule on bribery in the private sector is laid down in section 299, no. 2. Pursuant to this rule, active and passive bribery is made a criminal offence collectively. It follows from section 299, no. 2, that any person who, in circumstances other than those covered by section 280 of the Danish Criminal Code, in his capacity as trustee of any property of any other person accepts or claims in breach of his duty the promise of a third party, for the benefit of himself or of others, a gift or any other privilege, as well as any person who grants, promises or offers such an advantage, shall be liable to a fine or to imprisonment for a term not exceeding one year and six months.

The provision has the following wording:

**“Section 299.** Any person who in circumstances other than those covered by Section 280 of this Act,

(1) [...]

(2) in his capacity as trustee of any property of another person accepts, claims or accepts the promise of a third party, for the benefit of himself or of others, a pecuniary advantage the receipt

of which is concealed from the person whose interests he is protecting, as well as any person who grants, promises or offers such advantage;  
shall be liable to a fine or imprisonment for any term not exceeding one year and six months.”

In addition to (purely) private property affairs, this rule will be applicable in cases where property belonging to public authorities is administered by persons falling outside the category of persons covered by section 144 of the Criminal Code.

It is of no significance for the criminal liability whether the person who is granting the bribe is a joint contractor or a third party. It is likewise without any significance whether the person who is to benefit from such bribe is the person who is in charge of the property relationship, or a third party.

The only thing required is that the granting or receipt of the pecuniary or any other advantage is connected with this person's taking care of another person's property.

It is also a criminal offence to receive or grant a bribe in ongoing business relationships even though the receipt or granting of a bribe has not been discussed or implied before entering into prior agreements if – considering the fact that it is a current relationship – it is to be assumed that the receipt or the granting of the bribe commission is made for the purpose of the further development of the business relationship.

Bribery of arbitrators is punishable under section 304a of the Criminal Code. The provision is worded as follows:

**“304a. (1)** Any person who unduly grants, promises or offers a gift or other advantage to any person who acts as an arbitrator in Denmark or abroad in order to induce him to act or refrain from acting in relation to the exercise of such function is liable to a fine or imprisonment for up to one year and six months.  
**(2)** The same penalty applies to any person who, in Denmark or abroad, acts as an arbitrator, and who unduly, in the exercise of such function, receives, demands or accepts the promise of a gift or other advantage.”

## ***Other information***

### *Relevant authorities*

Information on bribery offences must be reported to the police or the Public Prosecutor for Serious Economic Crime (SØK) who deals with severe white collar crime, including corruption.

The National Contact Point (NCP) in Denmark is:

Ministry of Justice  
Slotsholmsgade 10  
1216 Copenhagen K  
[jm@jm.dk](mailto:jm@jm.dk)  
Phone (+ 45) 33 92 33 40

### *Relevant Internet links to national implementing legislation*

All Danish legislation is publicly available, including on the website [www.retsinfo.dk](http://www.retsinfo.dk) (text only in Danish).



### *Signature/Ratification of other relevant international instruments*

Denmark has signed and/or ratified the following international instruments on combating corruption:

- European Criminal Law Convention on Corruption: Signed 27 January 1999, ratified 2 August 2000.
- European Civil Law Convention on Corruption: Signed 4 November 1999.
- Additional Protocol on the European Criminal Law Convention on Corruption: Signed 15 May 2003, ratified 16 November 2005.
- United Nations Convention against Corruption: Signed 10 December 2003.
- United Nations Convention against Transnational Organized Crime: Signed 12 December 2000, ratified 30 September 2003.
- In addition, Denmark is party to all EU instruments on combating corruption.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (December 2000)

<http://www.oecd.org/dataoecd/39/57/2018413.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2006)

<http://www.oecd.org/dataoecd/14/21/36994434.pdf>

Phase 2 Follow-up report on the implementation of the Phase 2 Recommendations on the application of the Convention and the 1997 revised recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (June 2008)

<http://oecd.org/dataoecd/4/56/41073747.pdf>

## ESTONIA

*(Information as of 17 September 2008)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Participation in the Working Group on Bribery (WGB): June 2004

The instrument of accession was deposited with the OECD Secretary General on 23 November 2004

Entry into force of the Convention: 22 January 2005

Entry into force of implementing legislation: 1 July 2004

### ***Implementing and other relevant legislation***

The laws implementing the Convention include:

- Penal Code, in particular the amendments entered into force on 15 March 2007, concerning confiscation, and amendments entered into force on 28 July 2008, concerning the definition of foreign public official, jurisdiction in foreign bribery cases, and responsibility of legal persons;
- Code of Criminal Procedure;
- Income Tax Act.

According to section 298 of the Penal Code, giving or promising a bribe is punishable by 1 to 5 years' imprisonment, or if committed by a legal person, is punishable by a pecuniary punishment. The same act, if committed at least twice, is punishable by 2 to 10 years' imprisonment, or if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

Bribe has been defined in section 294(1) of the Code. The provision states that an official who consents to a promise of property or other benefits, for the official himself/herself, or for a third person, or who accepts property or other benefits in return for an unlawful act which he or she has committed or which there is reason to believe that he or she will commit, or for an unlawful omission which he or she has committed or which there is reason to believe that he or she will commit and, in so doing, takes advantage of his or her official position shall be punished by 1 to 5 years' imprisonment.

### ***Other relevant laws include:***

- Anti-Corruption Act;
- Money Laundering and Terrorist Financing Prevention Act (as adopted in 2007);
- Accounting Act;
- Police Act;
- Security Authorities Act;
- Surveillance Act;
- Witness Protection Act;

- Authorised Public Accountants Act;
- Taxation Act;
- Prosecutor's Office Act;
- Public Procurement Act (as adopted in 2007);
- State Export Guarantees Act;
- Public Service Act.

### ***Other information***

#### *Contact and Resources*

- The Ministry of Justice – the department of Criminal Policy - is responsible for the overall co-ordination of anti-corruption policy: [www.just.ee](http://www.just.ee).
- The Parliamentary Select Committee on the Application of Anti-Corruption Act is the depository of economic interests' declarations: [www.riigikogu.ee](http://www.riigikogu.ee).
- The Police and Prosecutor's Offices are responsible for investigating and prosecuting corruption crimes. The Security Police is responsible for investigating corruption crimes of higher officials. It is also responsible for the anonymous hotline for reporting cases of corruption.
- Anti-corruption information website (includes hotline): [www.korruptsioon.ee](http://www.korruptsioon.ee).
- Information on bribery offences may be reported also to the police ([www.politsei.ee](http://www.politsei.ee)), the Security Police ([www.kapo.ee](http://www.kapo.ee)), or the Public Prosecutor's Office.
- Legislative acts are published in the State Gazette (Riigi Teataja): [www.riigiteataja.ee](http://www.riigiteataja.ee).

Unofficial translations have been made accessible by the Estonian Legal Language Centre: [www.legaltext.ee](http://www.legaltext.ee).

#### *Signature/Ratification of other relevant international instruments*

- Civil Law Convention on Corruption – ratified by the Act RT II 2000, 27, 164;
- Criminal Law Convention on Corruption – ratified by the Act RT II 2001, 28, 140;
- Convention drawn up on the basis of Article K.3 (2) (C) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union – acceded by the Act RT II, 39, 145.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (March 2006)  
<http://www.oecd.org/dataoecd/38/54/36211984.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2008)

<http://www.oecd.org/dataoecd/60/57/40953976.pdf>

## FINLAND

*(Information as of 27 February 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession, implementing legislation***

Finland has signed OECD Convention of Anti-Bribery 17.12.1997. Finland deposited its instrument of ratification on 10 December 1998. Convention entered into force 15 February 1999.

The necessary implementing legislation was enacted in November 1998 and came into force on 1 January 1999.

### ***Other relevant laws, regulations and decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

Penal Code, especially Chapter 16, sections 13-14b; Chapter 30, sections 7-8a; Chapter 40, sections 1-4a.

Act on International Legal Assistance in Criminal Matters

Act on Detection and Prevention of Money Laundering (68/1998 and 365/2003)

Act on Credit Institutions (1607/1993)

Act on Taxation of Business Income (1134/2006)

Accounting Act (1336/1997)

State Civil Servant's Act

Security Clearance Act

Finland is a Party to European Convention of Extradition (1957), 1996 Convention of Extradition between EU Member States as well 1995 Convention on a Simplified Extradition Procedure between EU Member States.

### ***Signature/Ratification of other relevant international instruments***

- Finland has (among others) signed and/or ratified the following international instruments on combating corruption:
- European Council Criminal Law Convention on Corruption, signed 27.1.1999, ratified 3.10.2002, entered into force 1.2.2003;
- European Council Civil Law Convention on Corruption, signed 8.6.2000, ratified 23.10.2001, entered into force 1.11.2003;
- Additional Protocol on the European Council Criminal Law Convention on Corruption; entered into force 1.10.2011;

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed 25.9.1991, ratified 9.3.1994 and entered into force 1.7.1994; United Nations Convention against Transnational Organised Crime, signed 12.12.2000, ratified 10.2.2003.
- United Nations Convention against Corruption, signed 10.12.2003; accepted by the Parliament of Finland 20<sup>th</sup> of June 2006, entered into force 21<sup>st</sup> of July 2006.

*Relevant Internet links to national implementing legislation*

The Ministry of Justice

[www.om.fi](http://www.om.fi)

The Office of the General Prosecutor

[www.oikeus.fi/vksv/](http://www.oikeus.fi/vksv/)

The Police

[www.poliisi.fi](http://www.poliisi.fi)

(see also links to the National Bureau of Investigation and there also the Money Laundering Clearing House)

The Government of Finland

[www.valtioneuvosto.fi](http://www.valtioneuvosto.fi)

The Parliament of Finland

[www.eduskunta.fi](http://www.eduskunta.fi)

Web-based legal resource centre of the Finnish Ministry of Justice is found in

[www.finlex.fi](http://www.finlex.fi)

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/14/20/2386203.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/52/0/2088239.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions

<http://www.oecd.org/dataoecd/50/13/36373405.pdf>

Phase 3: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/59/30/46212643.pdf>

## ***Excerpt of Penal Code***

### ***Chapter 16 - Offences against the public authorities (563/1998)***

#### ***Section 13 – Bribery (604/2002)***

(1) A person who promises, offers or gives to a public official or gives a public official in exchange for his/her actions in service a gift or other benefit intended for him/her or for another, that influences or is intended to influence or is conducive to influencing the actions in service of the public official, shall be sentenced for *bribery* to a fine or to imprisonment for at most two years.

(2) Also a person who, in exchange for the actions in service of a public official, promises, offers or gives the gift or benefit referred to in subsection 1 shall be sentenced for bribery.

#### ***Section 14 - Aggravated bribery (563/1998)***

If in the bribery

(1) the gift or benefit is intended to make the person act in service contrary to his/her duties with the result of considerable benefit to the briber or to another person or of considerable loss or detriment to another person; or

(2) the value of the gift or benefit is considerable and the bribery is aggravated also when assessed as whole, the offender shall be sentenced for *aggravated bribery* to imprisonment for at least four months and at most four years.

#### ***Section 14 a – Bribery of a Member of Parliament (637/2011)***

A person who promises, offers or gives to a Member of Parliament a gift or an other benefit, which is not considered customary hospitality and which is intended for him or her or for another person, so that the said Member of Parliament would, in exchange for the benefit and in his or her parliamentary service, act in a manner or to attain a certain goal or as a reward for such act, and the act clearly harms the trust in the independence of the parliamentary mandate, shall be sentenced for bribery a Member of Parliament to a fine or to imprisonment for at most two years.

Election funding in accordance with the Act on a Candidate's Election Funding (273/2009) is not considered bribing of a Member of Parliament, unless it is intended to evade this Section.

#### ***Section 14 b - Aggravated Bribery of a Member of Parliament (637/2011)***

If in the giving of bribes to a Member of Parliament

(1) the gift or benefit is intended to make the person act in his or her parliamentary service in a manner which would result in considerable benefit to the briber or to another person or to considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable

and the bribery of a Member of Parliament is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated bribery of a Member of Parliament to imprisonment for at least four months and at most four years.

### *Section 18 - Corporate criminal liability (637/2011)*

The provisions on corporate criminal liability apply to bribery, aggravated bribery, bribery and aggravated bribery of a Member of Parliament.

### *Section 20 – Provisions on the scope of application (604/2002)*

(1) In applying sections 1 through 3 of this chapter, a person elected to a public official as referred to in chapter 40, section 11, a foreign public official acting in the service of the International Criminal Court or in Finnish territory on the basis of an international agreement or other international obligation in inspection, surveillance, pursuit or pre-trial investigation duties, a person

exercising public authority and a soldier on duty are equated with a civil servant as the object of the criminal act.

(2) In applying section 9 of this chapter, a person elected to a public office as referred to in chapter 40, section 11, a foreign public official acting in the service of the International Criminal Court or in Finnish territory on the basis of an international agreement or other international obligation in inspection, surveillance, pursuit or pre-trial investigation duties, a person exercising public

authority, are equated with a public official.

(3) In applying sections 13 and 14 of this chapter, a person elected to a public office, an employee of a public corporation, a foreign public official, a person exercising public authority and a soldier referred to in chapter 40, section 11 are equated with a public servant as the object of the criminal act.

(4) For the purposes of section 14 a of this chapter, a member of a foreign Parliament referred to in chapter 40, section 11 is equated with a Member of Parliament as the object of the criminal act.

(5) In applying sections 1 through 3, 9, 13 and 14 of this chapter, if provisions other than in this Code pertain to the application of provisions on criminal liability to persons other than those referred to in subsections 1 through 4, he/she is equated with a public servant as the object of the criminal act.

### ***Chapter 30 – Business Offences (769/1990)***

#### *Section 7 - Bribery in Business (637/2011)*

A person who promises, offers or gives an unlawful benefit (a bribe) to

(1) a person in the service of a business,

(2) a member of the administrative board or board of directors, the managing director, auditor or liquidator of a corporation or of a foundation engaged in business,

(3) a person carrying out a duty on behalf of a business; or

(4) an arbitrator resolving a dispute between corporations, other parties or a corporation and an other party,

intended for the recipient or another person, in order to have the person being bribed, in his or her function or duties, favour the briber or another person, or to reward the bribed person for such favouring,



shall be sentenced for bribery in business to a fine or to imprisonment for at most two years, unless the person is to be sentenced for bribery or aggravated bribery of a public official or a Member of Parliament.

#### *Section 7 a – Aggravated Bribery in Business (637/2011)*

If in the giving of bribes in business

(1) the gift or benefit is intended to make the person act in his or her service in a manner which would result in considerable benefit to the briber or to another person or to considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable

and the bribery is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated bribery in business to imprisonment for at least four months and at most four years.

#### *Section 8 - Acceptance of a Bribe in Business (637/2011)*

A person who

(1) in the service of a business,

(2) as a member of the administrative board or board of directors, the managing director, auditor or liquidator of a corporation or of a foundation engaged in business,

(3) in carrying out a duty on behalf of a business; or

(4) as an arbitrator resolving a dispute between corporations, other parties or a corporation and an other party

demands, accepts or receives a bribe for himself or herself or another or otherwise takes an initiative towards receiving such a bribe, for favouring or as a reward for such favouring, in his or her function or duties, the briber or another, shall be sentenced for acceptance of a bribe in business to a fine or to imprisonment for at most two years, unless the person is to be sentenced for acceptance of bribes or aggravated acceptance of bribes in public office.

#### *Section 8 a – Aggravated Acceptance of a Bribe in Business (637/2011)*

If in the acceptance of bribes in business

(1) the offender acts in his or her service in a manner which results in considerable benefit to the briber or to another person or to considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable

and the acceptance of a bribe is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated acceptance of a bribe to imprisonment for at least four months and at most four years.

## ***Chapter 40 - Offences in Public Office (604/2002)***

### ***Section 1 – Acceptance of a bribe (604/2002)***

(1) If a public official, for his/her actions while in service, for himself/herself or for another,

(1) asks for a gift or other unjustified benefit or otherwise takes an initiative in order to receive such a benefit,

(2) accepts a gift or other benefit which influences, which is intended to influence or which is conducive to influencing him/her in said actions, or

(3) agrees to the gift or other benefit referred to in paragraph 2 or to a promise

or offer thereof, he/she shall be sentenced for *acceptance of a bribe* to a fine or to imprisonment for at most two years.

(2) A public official shall be sentenced for acceptance of a bribe also if for his/her actions while in service agrees to the giving of the gift or other benefit referred to in subsection 1(2) to another or to a promise of offer thereof.

(3) A public official may also be sentenced to dismissal if the offence demonstrates that he/she is manifestly unfit for his/her duties.

### ***Section 2 - Aggravated acceptance of a bribe (604/2002)***

If in the acceptance of a bribe

(1) the public official stipulates the bribe as a condition for his/her actions or it is his/her intention, because of the gift or benefit, to act in a manner contrary to his/her duties to the considerable benefit of the party giving the gift or of another, or to the considerable loss or detriment of another, or

(2) the gift or benefit is of significant value and the acceptance of a bribe is aggravated also when assessed as a whole, the public official shall be sentenced for *aggravated acceptance of a bribe* to

imprisonment for at least four months and at most four years and in addition to dismissal from office.

### ***Section 3 – Bribery violation (604/2002)***

If a public official, for himself/herself or for another

(1) asks for a gift or other unlawful benefit or otherwise takes an initiative in order to receive such a benefit, or

(2) accepts or agrees to a gift or other benefit or agrees to a promise or offer of such a gift or other benefit so that the actions are conducive to weakening confidence in the impartiality of the actions of authorities, he/she shall be sentenced, if the act is not punishable as the acceptance of a bribe or aggravated acceptance of a bribe, for a *bribery violation* to a fine or to imprisonment for at most six months.

#### *Section 4 – Acceptance of a bribe as a Member of Parliament (637/2011)*

If a Member of Parliament, for himself or herself or for another

1) requests a gift or other benefit or otherwise takes an initiative in order to receive such a benefit, or

2) accepts or agrees to accept a gift which is not considered customary hospitality or other benefit or agrees to a promise or an offer of such a gift or other benefit in exchange for the benefit, to act in his or her parliamentary service in a manner or to attain a certain goal or as a reward for such act, and the act clearly harms the trust in the independence of the parliamentary mandate, he or she shall be sentenced for acceptance of a bribe as a Member of Parliament to a fine or to imprisonment for at most two years.

Accepting election funding in accordance with the Act on a Candidate's Election Funding (273/2009, as amended) is not considered as acceptance of a bribe as a Member of Parliament, unless it is intended for evading this Section.

#### *Section 4 a – Aggravated Acceptance of a Bribe as a Member of Parliament (637/2011)*

If in the acceptance of a bribe as a Member of Parliament

(1) the Member of the Parliament sets the gift or benefit as a condition to his or her actions, or acts in his or her parliamentary service in a manner which results in considerable benefit to the briber or to another person or to considerable loss or detriment to another person, or

(2) the value of the gift or benefit is considerable

and the acceptance of a bribe as a Member of Parliament is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated acceptance of a bribe as a Member of Parliament to imprisonment for at least four months and at most four years.

#### *Section 11 – Definitions (604/2002)*

For the purposes of the present law:

(1) a *public official* is defined as a person who serves in an office or in a comparable position of service in respect of the state, a municipality or an association of municipalities or of a co-operative body under public law of municipalities, Parliament, a state-owned company or the Evangelical

Lutheran Church or the Orthodox Church or its parish or a co-operative body among parishes, the province of Åland, the Bank of Finland, the Social Insurance Institution, the Institute of Occupational Health, a municipal pension institution, the Municipal Surety Centre or a municipal

labour market office;

(2) a *person elected to a public office* is defined as a member of a municipal council and any other member of a popularly elected representative body of a public body referred to in paragraph 1 other than a member of Parliament acting in his/her Parliamentary mandate, and a member of a public body or institution referred to in paragraph 1, such as the Government, municipal executive board, board, board of directors, committee, commission and advisory board and any other elected official of said public body or institution;

(3) an *employee of a public corporation* is defined as a person under a contract of employment with a public body or institution referred to in paragraph 1;

(4) a *foreign public official* is defined as a person who has been appointed or elected to an administrative or judicial office or position in a body or court of a foreign state or public international organisation, or who otherwise attends to a public function on behalf of a body or court of a foreign state or public international organisation;

(5) a *person exercising public authority* is defined as (a) a person whose functions on the basis of an act or decree include issuing orders that oblige another or deciding on the interest, rights

or duties of another, or who on the basis of an act or decree in fact in his/her duties intervenes into the benefits or rights of another, and

(b) a person who on the basis of an act or decree or on the basis of a commission from an authority on the basis of an act or decree participates in the preparation of a decision referred to in paragraph

(a) by presenting a draft decision or a proposal for a decision, preparing a report or plan, taking a sample, carrying out an inspection or in another corresponding manner;

(6) a *Member of a foreign Parliament* is defined as a person who is a Member of the Parliament of a foreign state or the International Parliamentary Assembly.

#### *Section 12 – Provisions on the scope of application (604/2002)*

(1) The provisions in this chapter on public officials apply also to a person tending to a public elected office and to a person exercising public authority.

(2) Sections 1 through 3, 5 and 14 of this chapter apply, with the exception of dismissal, also to an employee of a public corporation.

(3) Sections 1 through 3 and of this chapter, with the exception of dismissal, apply also to foreign public officials. In addition, sections 5 and 7 through 10 of this chapter, with the exception of the sanction of dismissal, apply to a foreign public official who serves in the territory of Finland on the basis of an international agreement or other international obligation in inspection, surveillance, pursuit or pre-trial investigation duties.

(4) Sections 4 and 14 of this chapter apply also to members of a foreign Parliament.

(5) Separate legislation applies to the application in certain cases of provisions on penal liability as a public official.

## FRANCE

(Information as of 2<sup>nd</sup> March 2012)

### *Date of deposit of instrument of ratification or acceptance or date of accession*

The Act authorising the ratification of the OECD Convention was adopted on 25 May 1999 (Act No. 99-424 of 27 May 1999, *JORF* No. 121 of 28 May 1999, page 7 858). France deposited its instrument of ratification on 31 July 2000.

### *Implementing legislation*

The former framework established by the Corruption Act of 30 June 2000 (*JORF* No. 151 of 1 July 2000, page 9 944) was amended by the Anti-Corruption Act of 13 November 2007 (Anti-Corruption Act No. 2007-1598 of 13 November 2007 published in *JORF* No. 264 of 14 November 2007, page 18 648).

In addition to the existing offences of bribery and trading in influence in domestic law, there are now four offences addressing bribery of foreign public officials:

- passive bribery of a public official of a foreign State or international organisation;
- active bribery of a public official of a foreign State or international organisation;
- passive bribery of foreign or international judicial staff;
- active bribery of foreign or international judicial staff.

These offences do not distinguish between whether the acts were committed inside or outside the European Union or in the course of international business transactions or not.

There are also four offences addressing trading in influence with foreign public officials that are drafted in the same terms as the equivalent offences in domestic law:

- passive trading in influence with an international public official;
- active trading in influence with an international public official;
- passive trading in influence with international judicial staff;
- active trading in influence with international judicial staff.

The Act of November 2007 also created two new offences regarding bribery of a witness in a foreign or international judicial procedure (Article 435-12) and threats against or intimidation of foreign or international judicial staff (Article 435-13) that are counterparts to the domestic offences in this field.

All these offences are applicable to both natural and legal persons.

The Act also introduces a new Article 706-1-3 of the Code of Criminal Procedure that makes all domestic and international offences of bribery and trading in influence subject to surveillance and undercover measures, telephone tapping in the investigation phase and the use of audio and video recording in certain locations or vehicles and the possibility of taking preventive measures that until now have only been used in cases of organised crime.

***Other relevant legislative or regulatory provisions concerning the implementation of the OECD Convention or Recommendations:***

*With regard to the implementation of the OECD Convention in the field of money laundering (Article 7):*

On 11 February 2004, adoption of Act No. 2004-130 reforming the status of certain judicial and legal professions, legal experts, industrial property consultants and experts in public auctions, which transposes the second anti-money laundering Directive of 4 December 2001. This Act organises the methods of access to these professions, strengthens ethical and disciplinary standards and improves the means available to certain professions to contribute to implementing decisions and thereby to ensuring the effectiveness of the justice system. It broadens the scope for the reporting of suspicious activities to include accountants, auditors, notaries, bailiffs, judicial administrators and legal agents responsible for winding up businesses as well as barristers with a right of audience before the *Conseil d'Etat* and the *Cour de cassation*, lawyers and solicitors appearing before courts of appeal and judicial auctioneers and auction houses.

On 31 January 2009, publication of Order No. 2009-104 on preventing the use of the financial system for the purposes of money laundering and terrorist financing, which transposes into domestic law the third anti-money laundering Directive of 26 October 2005 and has recast the entire domestic “anti-money laundering” system. This Order was ratified on 12 May 2009 as part of the legislation known as the “Act on the simplification and clarification of the law and the streamlining of procedures”. The scope of the anti-laundering system (obligations to exercise customer due diligence, keep records for five years and report any suspicious activities to Tracfin) has been extended to domiciliary companies and lawyers acting as trustees and now encompasses all financial institutions and many non-financial professionals (legal and judiciary professions, accounting professions, casinos and gambling clubs, professionals who act as intermediaries in real estate transactions, etc.).

The principle of a risk-based approach reflected in the due diligence to be exercised by the relevant professionals has been introduced (*i.e.*, identification of the customer, and if applicable the beneficial owner in the business relationship, knowledge of the purpose and nature of this relationship and ongoing monitoring through careful scrutiny of transactions). In addition, the scope of the reporting of suspicious activities, which was previously limited to certain types of exceptionally serious crimes, has been broadened to include more ordinary offences, and in particular tax evasion. This law has also established an anti-laundering monitoring system aimed at all relevant professionals (except for antique dealers and jewellers), combined with dissuasive and proportionate powers to impose sanctions. The newly designated monitoring authorities are the professional associations of the legal and judicial professions and the accounting professions, and the monitoring services of the central government (DGCCRF, DCPJ) for real estate agents, domiciliary companies and casinos. A national sanctions board will also be responsible for imposing any disciplinary sanctions if real estate agents, domiciliary companies or casinos are found not to have complied with anti-laundering rules.

*With regard to the implementation of the Convention in the field of accounting (Article 8)*

On 1 August 2003, adoption of the Act on financial security (Act No. 2003-706, *JORF*, No. 177 of 2 August 2003, page 13 220), which contains several provisions intended to strengthen supervision of auditors. It introduces a series of measures to avert conflicts of interest and collusion between auditors and the companies whose accounts they audit and creates a body to supervise the profession, the *Haut Conseil du commissariat aux comptes*. The powers and financial autonomy of this body have subsequently been strengthened by various provisions.

Order No. 2005-1126 of 8 September 2005 has incorporated into the Commercial Code all of the rules applicable to the legal auditing of accounts.

Decree No. 2005-1412 of 16 November 2005 (supplemented by the Decrees of 2 July 2008 and 10 February 2010) creating a code of ethics for auditors, subsequently amended to comply with the requirements of the European Commission.

*With regard to protection of whistleblowers*

Protection against all discriminatory measures for employees reporting cases of bribery encountered while they are performing their duties (Act of 13 November 2007): Article L. 1161-1 of the Labour Code establishes effective legal protection against any form of disciplinary sanction against employees who, in good faith, disclose or report to their employer or to the judicial or administrative authorities acts of bribery that have come to their attention while performing their duties. Any breach of the employment contract that might result from this and any sanction or measure taken in breach of this provision shall be automatically void.

*With regard to international co-operation and asset recovery*

Act No. 2010-768 of 9 July 2010 to facilitate seizure and confiscation in criminal cases recasts the rules applicable to confiscation by extending the scope of the assets that can be confiscated, introducing a special criminal seizure procedure and creating an agency to manage and recover seized and confiscated assets. It also strengthens criminal co-operation in the field of seizure and confiscation of illicit proceeds, firstly by transposing Framework Decision 2006/783/JHA of 6 October 2006, enabling France to enforce the principle of the mutual recognition and execution of confiscation orders between Member States of the European Union, and, secondly by codifying the judicial co-operation provisions applicable in the field of seizure and confiscation and extending their scope correspondingly to all international conventions, thereby establishing a mechanism for judicial co-operation in this field.

*With regard to the foreign bribery offence*

Law 2011-525 of 17 May 2011 “to simplify and improve the quality of law” (“de simplification et d'amélioration de la qualité du droit”), in its article 145 (-6 to -13), aims to remove any ambiguity as to the possible requirement of a prior “corruption pact” (“pacte de corruption”). In this regard, it amends the drafting of the provisions relating to both active and passive bribery, of a foreign public official, an official of an international organisation, or an official of a foreign or international judicial authority, as well as to passive and active trading in influence, committed in respect of a foreign public official or an official of an international judicial authority.

Law 2011-1862 of December the 13<sup>th</sup> 2011 “on proceedings competences” (relative à la répartition des contentieux), in its article 27, introduces, regarding the prosecution of foreign bribery cases, the possibility for prosecutors and investigating magistrates to resort to a plea-bargaining procedure (CRPC comparution sur reconnaissance préalable de culpabilité).

***Other information***

*Relevant authorities:*

- Ministry of Justice and Freedoms
- *Service Central de la Prévention de la Corruption* (national agency in charge of prevention matters)
- Ministry of Economy, Finance and Industry

- Ministry of Budget, Public Accounts, the Civil Service and State Reform
- Ministry of Foreign and European Affairs
- *Brigade centrale de lutte contre la corruption* (Central Anti-Bribery Brigade)
- TRACFIN
- AGRASC Agence de gestion et de recouvrement des avoirs saisis et confisqués (specialised asset management agency)

Relevant Internet links to national implementing legislation, for example:

For the implementation of the Criminal Code and the Code of Criminal Procedure, see:

<http://www.legifrance.gouv.fr>

*Ratification of other relevant international instruments:*

- United Nations Convention against Corruption: signed on 9 December 2003, ratified on 11 July 2005.
- European Convention on Extradition: signed on 13 December 1957, ratified on 10 February 1986.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime: signed 5 July 1991, ratified on 25 February 1997.
- EU Convention on the Protection of the European Communities' Financial Interests and its First and Second Protocol: ratified on 27 May 1999.
- EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States: ratified on 27 May 1999.
- United Nations Convention against Transnational Organized Crime: signed on 12 December 2000, ratified on 29 October 2002.

France has volunteered for a pilot programme to evaluate the implementation of the UN's anti-corruption convention. In this connection, it is currently evaluating two countries and is assisting in the evaluation of Argentina and Greece.

- Council of Europe Criminal Law Convention on Corruption: signed on 9 September 1999, ratified on 25 April 2008.
- Council of Europe Civil Law Convention on Corruption: signed on 26 November 1999, ratified on 25 April 2008.
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption: signed on 15 May 2003, ratified on 25 April 2008;



*Signature of other relevant international instruments*

- European Union Council Framework Decision of 22 July 2003 on combating corruption in the private sector.

***Phase 1 and Phase 2 Monitoring Reports on the Implementation of the Convention***

Phase 1 report: <http://www.oecd.org/dataoecd/24/50/2076560.pdf>

Phase 2 report: <http://www.oecd.org/dataoecd/36/36/26242055.pdf>

Phase 2 Follow-up report (since January 2004):  
<http://www.oecd.org/dataoecd/36/18/36411181.pdf>

## GERMANY

(Information as of 26 September 2011)

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Germany ratified the Convention on 10 November 1998.

### ***Implementing legislation***

The implementing legislation contained in the Act on Combating Bribery of Foreign Public Officials in International Business Transactions of 10 September 1998 (*Gesetz über die Bekämpfung der Bestechung ausländischer Amtsträger im internationalen Geschäftsverkehr – IntBestG* - Federal Law Gazette [Bundesgesetzblatt] Part II p. 2327, Annex 1) entered into force together with the Convention on 15 February 1999.

The general approach of this Act is to provide for the equal treatment of the offences of bribing domestic and foreign public officials and parliamentarians. Prior to the new legislation, only bribery of domestic public officials and parliamentarians had been punishable. A separate offence has been created for the bribery of foreign Members of Parliament and members of parliamentary assemblies of international organisations.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- Criminal Code (*Strafgesetzbuch*): See especially Section 334 (Bribery of domestic public officials) which - according to the Act on Combating Bribery of Foreign Public Officials - is applicable in cases of bribery of foreign public officials.
- Act on Administrative Offences (*Ordnungswidrigkeitengesetz*): Section 30 of the Act provides for a liability of legal persons in the case of a criminal offence which is attributable to the legal person. Additionally, according to section 130, representatives of a legal person may be liable in cases of failure to provide for or carry out supervisory measures if for this reason employees of the legal person commit criminal offences.
- Act on Criminal Procedure (*Strafprozessordnung*)
- Law on International Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen)
- Income Tax Act (*Einkommensteuergesetz*): Section 4 para. 5 No. 10 obliges the Tax and revenue Authorities to report any suspected act of bribery to the Offices of Public Prosecutors.
- Anti-Money Laundering Act (*Geldwäschegesetz*)
- Commercial Code (*Handelsgesetzbuch*)
- Stock Corporation Act (*Aktiengesetz*)
- Limited Liability Company Act (*GmbH-Gesetz*)

- Legislation implementing the European anti-corruption instruments, notably the Second Protocol to the Convention for the Protection of the Financial Interest of the European Union as well as the European Joint Action on bribery in the private sector, was adopted by Parliament and came into force on 30 August 2002. The law contains amendments to the Criminal Code, extending the domestic private bribery offence to international bribery, as well as to the Regulatory Offences Act, extending the provisions on sanctioning of legal persons and providing for higher fines.
- The adoption of the Second Protocol to the Convention for the Protection of the Financial Interest of the European Union and of the EU Bribery Convention was finalised and published in the Official Gazette in October 2002. The Second Protocol to the Convention for the Protection of the Financial Interest was ratified on 5 March 2003 and the EU Bribery Convention was ratified on 8 October 2003.

### *Other information*

#### *Relevant Authorities*

##### Enforcement:

Federal Police Office (*Bundeskriminalamt – BKA*)

Website: [www.bka.de](http://www.bka.de)

*Länder* and local police offices

Weblinks to police offices: <http://www.bka.de/vorbeugung/linksammlung/linknational.html>

##### Policy:

Federal Ministry of Justice

Website: [www.bmj.bund.de](http://www.bmj.bund.de)

Federal Ministry of Economics and Technology

Website: [www.bmwi.bund.de](http://www.bmwi.bund.de)

Federal Ministry of the Interior

Website: [www.bmi.bund.de](http://www.bmi.bund.de)

#### *Reporting duties incumbent on authorities*

On principle, all public administration staff are subject to the duty to report instances of suspicion of corruption within the administration. The finance authorities are under a statutory duty to report all facts substantiating the suspicion of commission of a criminal offence.

#### *Relevant Internet links to national implementing legislation*

Selected Laws in English:

<http://www.iuscomp.org/gla>

<http://www.cgerli.org>

Federal Laws in German:

<http://www.gesetze-im-internet.de>

Texts on Corruption Prevention:

[http://www.bmi.bund.de/cln\\_165/DE/Themen/OeffentlDienstVerwaltung/KorruptionSponsoring/Korruption/korruption\\_node.html](http://www.bmi.bund.de/cln_165/DE/Themen/OeffentlDienstVerwaltung/KorruptionSponsoring/Korruption/korruption_node.html)

Information leaflet on the Act on Combating Bribery of Foreign Public Officials:

<http://www.bmwi.de/English/Navigation/Service/publications,did=156240.html>

General information on foreign bribery on the Federal Ministry of Economics' website (including German translation of Annex II to the 2009 Recommendation):

<http://www.bmwi.de/BMWi/Navigation/Mittelstand/auslandsgeschaeft.html>

#### *Signature of other international instruments*

Germany has signed the Civil and the Criminal Law Convention on Corruption of the Council of Europe, the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. Germany is a founding member of and has ratified the Agreement on the Group of States against Corruption – GRECO.

#### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (April 1999)

<http://www.oecd.org/dataoecd/14/1/2386529.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (July 2003)

<http://www.oecd.org/dataoecd/52/9/2958732.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (January 2006)

<http://www.oecd.org/dataoecd/8/44/35927070.pdf>

Phase 3: Report on the Implementation and Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Transactions (March 2011)

<http://www.oecd.org/dataoecd/6/46/47413672.pdf>

## GREECE

*(Information as of 1 December 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The Convention of OECD was ratified in Greece by Law No. **2656 of 1998**, according to article 28-paragraph 1 of the Hellenic Constitution.

### ***Implementing legislation***

**Law 2656/** 26-11/1-12-1998 “Ratification of the Convention on combating bribery of foreign public officials in international business transactions”,

It was published in 1-12-1998, in Official Government Gazette no A 265/1998, and date of entry into force is the same date.

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations***

**Law 3021/** 17/19-06-2002 “Restrictions on public procurement contracts regarding persons operating or participating in mass media enterprises”, according to article 14-paragraph 9e of the Hellenic Constitution, published in Official Government Gazette, no A 143/ 2002.

**Law 3023/** 21/25-06-2002 “Funding of political parties from the State”, published in Official Government Gazette, no A 146/ 2002.

*In this law, among others, it was given a complete definition of “national public official” (article 1-paragraph c, and article 3).*

**Law 3213/**31-12-2003, “Declaration and inspection of the financial position of MPs, functionaries and civil servants, mass media owners and other persons”, published in Official Government Gazette, no A 309/2003.

**Law 3691/**05-08-2008, “Prevention and Suppression of money laundering and terrorist financing and other provisions”, published in Official Government Gazette, no A 166/2008.

**Law 3849/**26-05-2010, “Amendment of the law 3213/2003, Penal Code provisions on Service-related offences and other provisions”, published in Official Government Gazette, no A 80/2010.

**Law 3842/**23.04.2010, art. 77 par. 1, “Restoration of fiscal justice, combat against fiscal misconduct and other provisions”, published in Official Government Gazette, no A 58/2010.

**Law 3870/**9-08-2010, “Electoral expenditure of parties and candidates, the inspection thereof at regional and municipal elections”, published in Official Government Gazette, no A 138/2010.

**Law 3875/**20.9.2010, art. 9 par. 2 and 3, “Ratification and implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols and relevant provisions”, published in Official Government Gazette, no A 158/2010.

**Law 3932/10-3-2011**, “Setting up an Authority on Fighting the Legalization of Proceeds from Criminal Activities and the Financing of Terrorism and on Controlling the Declarations of Assets”, published in Official Government Gazette, no A 49/2011.

**Law 3961/2011** “Amendments to law 3126/2003 on criminal liability for ministers and other provisions” (published in OGG A’97/29.4.2011)

**Law 4013/2011** “Setting up a single independent authority for public procurement and a central electronic register for public procurement – replacement of chapter six of law 3588/2007 (code on insolvency proceedings) – pre-insolvency proceedings and other provisions” (published in OGG A’204/15.9.2011)

**Law 4022/2011** “Corruption acts of political and public officials in cases of major social and public interest and other provisions” (published in OGG A’219/3.10.2011)

*Countries’ international commitments arising from other international instruments*

**Law 3666/10-06-2008**, “Ratification and Adoption of the United Nations Convention against Corruption and Amendment of the relevant Provisions of the Penal Code”, published in Official Government Gazette, no A 105/2008.

**Law 3560/14-05-2007** “Ratification and implementation of the Criminal Law Convention on Corruption and its additional protocol”, published in Official Government Gazette, no A 103/2007.

**Law 2802/ 2/3-03-2000** “Ratification of the Convention on combating bribery of European Communities’ or Member States of European Union public officials”, published in Official Government Gazette, no A 47/ 2000.

***Other information***

*Relevant authorities*

**The Supervising-Inspecting Board of Public Administration**, established by **Law 2477/ 18-04-1997** “Ombudsman and Supervising-Inspecting Board of Public Administration”, published in Official Government Gazette, no A 59/ 1997.

**The General Supervisor of Public Administration**, by **Law 3074/ 4-12-2002**, published in Official Government Gazette no A 296/2002.

**Working Group on Bribery Monitoring Reports**

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (January 1999)  
<http://www.oecd.org/dataoecd/14/7/2386792.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (April 2005)

<http://www.oecd.org/dataoecd/51/13/35140946.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (September 2007)

<http://www.oecd.org/dataoecd/46/61/39509775.pdf>

## HUNGARY

*(Information as of 4 October 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Date of deposit of instrument of ratification: 4 of December 1998. Entry into force in Hungary: 15 February 1999.

### ***Implementing legislation***

The foreign bribery offences (sections 258/B-258/E) were inserted into the Act no. IV of 1978 on the Criminal Code (hereinafter as CC) by the Act no. LXXXVII of 1998. The new provisions entered into force on the 1<sup>st</sup> of March 1999.

The foreign bribery offences were modified by Act no. CXXI of 2001 on the Amendment of criminal provisions. This act modified sections 258/B-258/E of the Criminal Code, redefining the foreign bribery offences and trading in influence in international relations. The new provisions entered into force on the 1<sup>st</sup> of April 2002.

The Act no. CL of 2011 inserted two new Subsections to Section 258/C. With the modified provisions, Hungary explicitly criminalises foreign passive bribery in the private sector. This Act also inserted a new provision to Section 258/E in connection with active trading in influence committed in international relations. Hungary made an amendment to Section 258/H. concerning the rules of the minimum period of statute of limitation regarding bribery and trading in influence. In contrast to the general rules of the Criminal Code (with the three year minimum period of statute of limitation), the modified provision introduces stricter rules (at least five years) concerning the minimum period in case of bribery and trading in influence crimes. All these above-mentioned amendments entered into force on the 1<sup>st</sup> of January 2012.

The Act no. CLXIII of 2009 inserted a new provision on the misprision of bribery in international relations to Section 258/F which entered into force on the 1<sup>st</sup> of April, 2010.

At present, the following offences are punishable under the Title “Bribery in International Relations”:

- Active bribery of foreign public officials (Section 258/B CC).
- Active bribery in foreign private sector [Section 258/C (1)-(2)].
- Passive bribery in foreign private sector [Section 258/C (3)-(4)].
- Passive bribery of foreign public officials (Section 258/D).
- Active and passive trading in influence in international relations (Section 258/E).

The Act on the criminal measures applicable against legal persons entered into force on the 1<sup>st</sup> of May 2004, as adopted by the Parliament in 2001. This act specifies the legal persons that can be brought under criminal investigation by setting a very broad, sui generis definition.



***Other relevant laws, regulations or decrees<sup>2</sup> that have an impact on a country's implementation of the OECD Convention or the Recommendations***

As a result of the Phase 1bis report, the Criminal Code was modified in 2003 in order to clarify the meaning of the foreign public official (section 137. point 3). The modification entered into force on the 1<sup>st</sup> of March 2004.

***Other information***

***Relevant authorities***

The General Prosecutor's Office has exclusive competence to investigate criminal offences based on the Convention, but any report on allegations can be sent to the Police.

***Relevant Internet links to national implementing legislation***

[www.mkogy.hu](http://www.mkogy.hu) (Parliament)

[www.1000ev.hu](http://www.1000ev.hu) (All Hungarian legislation from the year 1000)

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of implementation of the Convention and 1997 Recommendation (March 2003)

<http://www.oecd.org/dataoecd/14/54/2386997.pdf>

Phase 1 Bis: Review of implementation of the Convention and 1997 Recommendation (February 2004)

<http://www.oecd.org/dataoecd/32/23/2510372.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (May 2005)

<http://www.oecd.org/dataoecd/39/34/34918600.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (June 2007)

<http://www.oecd.org/dataoecd/22/35/39991723.pdf>

Phase 3: Report on implementing the OECD Anti-bribery Convention in Hungary (March 2012)

<http://www.oecd.org/daf/briberyininternationalbusiness/50026740.pdf>

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<sup>2</sup>

These laws, regulations or decrees should be provided as early as possible in the legislative phase to benefit from any comments of the Group

## ICELAND

*(Information as of 10 September 2011)*

### ***Date of deposit of instrument of ratification/ acceptance or date of accession***

The instrument of ratification was deposited with the OECD Secretary General on 17 August 1998.

### ***Implementing legislation***

Implementing legislation is Act No. 147/1998 amending Section 109, para. 2 of the General Penal Code concerning bribery of foreign public officials, and Act No. 144/1998 on Criminal Responsibility of Legal Persons in Relation to Bribery of Public Officials.

Section 109 of the General Penal Code has since been amended by Act No. 125/2003 implementing the European Criminal Law Convention on Corruption, concerning the description of the offence and adding categories to the definition of foreign public officials.

Following offences are punishable under the General Penal Code:

- Active and passive bribery of public officials (Section 109, para. 1, Section 128, para. 1).
- Active and passive bribery of foreign public officials (Section 109, para. 2, Section 128, para. 2).
- Active and passive trading in influence (Section 109, para. 3 and 4).
- Active and passive bribery in the private sector (Section 264. a).

Furthermore, Act No. 144/1998 on Criminal Responsibility of Legal Persons in Relation to Bribery and Terrorism [the title of the Act changed by Act No. 99/2002] was last amended by Act No. 125/2003, making the laundering of the proceeds of a bribery offence a punishable offence.

Art. 264 of the General Penal Code sets out criminal responsibility for laundering the proceeds of any criminal offence set out in the Code, including the bribery offence. In accordance with amendments made with Act 149/2009 the provision also includes self laundering.

### ***Other information***

#### *Relevant authorities*

The Office of the Special Prosecutor

The Public Prosecutor

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (October 1999)  
<http://www.oecd.org/dataoecd/14/40/2387563.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2003)

<http://www.oecd.org/dataoecd/12/8/2498248.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (May 2006)

<http://www.oecd.org/dataoecd/43/7/36682053.pdf>

Phase 3: Report on the Implementation and Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Transactions (December 2010)

<http://www.oecd.org/dataoecd/19/41/46861415.pdf>

## IRELAND

(Information as of June 2011)

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Ireland deposited the instrument of ratification on 22 September 2003. The Convention came into force on 21 November 2003.

### ***Implementing legislation***

The main body of law on corruption in Ireland is contained in the Prevention of Corruption Acts 1889 to 2010. The core offences of active and passive corruption are set out in the Prevention of Corruption (Amendment) Act, 2001. The offences apply to persons corruptly agreeing to give or accept a gift or consideration, or advantage for themselves or another party as a reward for a person carrying out or omitting to carry out any act. It should be noted that the corruption offences are very wide in that their scope extends to situations where the benefit or advantage goes directly to a third party, rather than being limited to only cases where the benefit goes to the actual person in receipt of the “bribe”.

The legislation provides for a presumption of corruption in certain circumstances, including the failure to disclose political donations or in relation to the exercise of certain functions. It penalises corruption in office and establishes the liability of officers of companies, as well as companies themselves, for offences of corruption. The maximum penalties for those convicted of the offence of corruption are an unlimited fine or 10 years’ imprisonment or both.

The most important development in the law in recent years was the enactment of the Prevention of Corruption (Amendment) Act 2010, which strengthens the existing legislation relating to the prevention of corruption and enhances its consistency and clarity. Key provisions include the extension of extra-territorial jurisdiction for corruption offences, a revision of the main corruption offence and the provision of whistleblowers protection.

The text of the 2010 Act can be found at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2010/a3310.pdf>

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations***

The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 (which builds on the 1995 Act) provide the legal framework for the adherence to good ethical practice - including several aspects relating to the prevention of corruption - by civil and public servants at the central level. The *Standards in Public Office Commission* (SIPOC) is an independent statutory body which is chaired by a Judge of the High Court. The Commission is charged with supervising the provisions of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001 in so far as that legislation applies to public servants (in the civil service and the wider public service) and members of Parliament who are Office Holders. Section 4 of the Standards in Public Office Act 2001 empowers the Standards in Public Office Commission to investigate complaints made against ‘a specified person’ - widely defined in the Act. Complaints may be made to the Commission regarding acts or omissions which are inconsistent with the proper performance of the functions of the specified person’s office, or with the maintenance of confidence in such performance and the matter is one of significant public importance.

Codes of conduct are in place for members of Parliament (both Houses) and Office Holders specified under the Ethics Acts. In the local government sector, codes of conduct are in place for Councillors and for local authority employees.

### ***Other key legislative measures***

The Criminal Justice (Theft and Fraud Offences) Act 2001, covers a very broad range of offences, for instance dishonestly inducing another person to carry out an act with the intention of making gain or causing loss (section 6), obtaining services by deception (section 7), unlawful operation of a computer with the intention of making gain or causing loss (section 9), and false accounting (section 10)

### The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

This Act strengthens Irish legislation on money laundering. The legislation creates broader money laundering offences and extends anti-money laundering regulatory systems.

The scope of the offence of money laundering was broadened substantially under the Act 2010 and includes any concealment, conversion handling etc. of property where a person knows, believes, or is reckless as to whether property represents the proceeds of "criminal conduct". Criminal conduct is defined (in section 6) to include any conduct that constitutes an offence; (formerly the definition was confined to indictable (serious) offences). Section 42 of the Act requires a "designated person" who knows suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of business that another person has been or is engaged in money laundering or terrorist financing to report this to the police or revenue commissioners. Auditors, external accountants and tax advisers are "designated persons". All offences, including corruption offences, no matter how minor, are considered as predicate offences for the purposes of the money laundering legislation. In this regard, it is important to note that any money laundering arising from a corruption offence would come within the suspicious transaction reporting requirements of section 42.

### ***Other information***

#### *Relevant authorities*

In Ireland, the national police force (An Garda Síochána) is the primary body for investigating criminal cases. For specific types of crime, specialised units operate within the national police force to detect and prevent crimes. As such specialised units, the Garda Bureau of Fraud Investigation established in 1995 deals with all serious fraud and money laundering cases, and the National Bureau of Criminal Investigation established in 1997 investigates serious and organised crime on a national and international basis. Also, the Money Laundering Investigation Unit established in 1995 is responsible for recording, evaluating, analysing and investigating disclosures relating to suspicious financial transactions.

#### *Relevant Internet links to national implementing legislation*

The relevant internet link to any legislation including the Prevention of Corruption (Amendment) Act, 2001 is <http://www.irishstatutebook.ie/front.html>

### **Membership of GRECO**

Ireland is a member of the Council of Europe anti-corruption body GRECO, and in accordance with their procedures, has been evaluated by the Group. The most recent Report is their Third Evaluation; see Reports below, covering Incriminations and aspects of Political Party Funding.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\\_2009\\_4\\_Ireland\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3_2009_4_Ireland_One_EN.pdf)

Theme II:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\\_2009\\_4\\_Ireland\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3_2009_4_Ireland_Two_EN.pdf)

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of implementation of the Convention and 1997 Recommendation (June 2002)

<http://www.oecd.org/dataoecd/26/39/2495019.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2007)

<http://www.oecd.org/dataoecd/27/45/38322693.pdf>

Phase 2bis: Second report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (December 2008)

<http://www.oecd.org/dataoecd/33/6/41869600.pdf>

Phase 2 and 2bis : Follow-Up Report on the Implementation of the Phase 2 and 2bis Recommendations on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation on Combating Bribery in International Business Transactions (March 2010)

<http://www.oecd.org/dataoecd/54/0/44856334.pdf>

## ISRAEL

*(Information as of 8 September 2011)*

### *Date of deposit of instrument*

The instrument of ratification was deposited with the OECD Secretary-General on 11 March 2009.

### *Implementing legislation*

- The amendment to the **Penal Law, 1977** (Article 291A) establishing the criminal offence of bribery of a foreign public official came into force on 21 July 2008.
- An amendment to the **Penal Law, 1977** increasing the maximum sanctions for active bribery, both foreign and domestic came into force on 4 February 2010. The amendment sets the sanctions at the following level:
  1. Maximum prison sentence of seven years;
  2. The maximum fine for the domestic and foreign bribery offences for natural persons is now 1,100,000 ILS. The maximum fine against a legal person now stands at 2,200,000 ILS. Alternatively, the court can now impose a fine of up to four times the benefit obtained by the offence or intended to be obtained by the offence.
- An amendment to the **Penal Law, 1977** (Article 291A) which expands the definition of a "Foreign Country" and stipulates that a foreign country also includes "a political entity that is not a state, including the Palestinian Council", came into force on 25 February, 2010. The amendment also cancels the dual criminality requirement for nationality jurisdiction over the offence of foreign bribery. The amendment modifies Article 15(b) of the **Penal Law** to the effect that nationality jurisdiction for the foreign bribery offence would be applicable even in cases where the offence is committed in a country where the act is not considered an offence according to its law.

### *Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations*

- Israel Tax Authority's Income Tax Circular 2/2011 "The prohibition of bribery of Foreign Public Officials", binding on all staff of the Israel Tax Authority, referring to the amendment to Article 32 of the Income Tax Ordinance and clarifying explicitly that the amendment applies also to payments of bribes to a foreign public official, issued on 23 January 2011.
- State Attorney's Guideline No. 9.15 "Aggravation of Sanctions and Sanctioning Policy for Bribery Offences", the Guideline instructs prosecutors to implement the policy set forth by the legislator in raising the sanctions for bribery offences, issued on 11 March 2010.
- Amendment to Article 32 to the Income Tax Ordinance establishing the non-deductibility of payments made "in violation of any law" enacted on 16 November 2009.
- Attorney General's Guideline No. 4.1110 "Attorney General Guideline – the Prohibition of Bribery of Foreign Public Officials- Article 291A of the Penal Law, 1977", established to clarify

policy in regards to the investigation and prosecution of the foreign bribery offence, issued on 2 November 2009.

- Civil Service Commission Circular, issued on 19 October 2009 - The circular informs public officials of the offence, the Convention and reporting duties on that regard.

### ***Other information***

#### *Relevant authorities*

- Israel Police
- Office of the State Attorney, Israel Ministry of Justice
- See also Israel's notification on Responsible Authorities under Article 11 to the Convention.

#### *Relevant internet links*

[www.corruption.justice.gov.il](http://www.corruption.justice.gov.il)

#### *Ratification of other relevant international instruments*

- The United Nations Convention Against Corruption
- The United Nations Convention Against Transnational Organized Crime

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (March 2009)  
<http://www.oecd.org/dataoecd/39/49/42394878.pdf>

Phase 2: Report on the Application of the Convention and the 1997 Recommendation (December 2009)  
<http://www.oecd.org/dataoecd/60/10/44253914.pdf>



## ITALY

*(Information as of 4 October 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

- a) The Convention was signed by Italy on 21 November 1997.
- b) The instrument of ratification was deposited on 15 December 2000.

### ***Implementing legislation***

a) The Convention was ratified and implemented in Italy through Act No. 300 of 29.9.2000, "Ratification and enforcement of the following international instruments drawn up on the basis of Article K 3 of the Treaty on the European Union: the Convention on the Protection of the European Communities' Financial Interests, done in Brussels on 26 August 1995; its First Protocol, done in Dublin on 27 September 1996; the Protocol concerning the Preliminary Interpretation, by the Court of Justice of the European Communities, of said Convention, with attached declaration, done in Brussels on 29 November 1996; the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, done in Brussels on 26 May 1997, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done in Paris on 17 December 1997. Delegation to the government to regulate the administrative responsibility of legal persons and of bodies without legal personality." The Act introduced Article 322-bis into the Criminal Code, which in subsection 2 provides for the criminal responsibility of anyone who bribes or attempts to bribe a foreign public official when the offence is committed in order to procure an undue benefit for himself or others in international business transactions. In addition, Act 300/2000 empowered the government to introduce the criminal responsibility of legal persons; Legislative Decree 231/01 then defined this responsibility and extended it so as to include the bribery of foreign public officials.

b) Act No. 300 of 29 September 2000 was published in the Official Journal No. 250 of 25 October 2000; the Act entered into force on 26 October 2000.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or Recommendations***

- a) **Legislative Decree No. 231 of 8 June 2001** on the Criminal Responsibility of Legal Persons;
- b) Criminal Code;
- c) Code of Criminal Procedure;
- d) Civil Code (Article 2621 et seq. on corporate crimes).
- e) **Legislative Decree No. 231 of 21 November 2007** (implementation of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC), that introduced also the Criminal Responsibility of Legal Persons for money laundering (new art. 25-octies, Leg. Decree No. 231/2001);

- f) **Law no. 116 of 3 August 2009** (Ratification and execution of the Convention of the United Nations Organization against corruption, adopted by the General Assembly of on 31 October 2003 with its resolution no. 58/4) has authorised the Ratification of the United Nations Convention against Corruption, signed by Italy on 9 December 2003, and introduced provisions for adjustments and amendments to the Criminal Code and to the Code of Criminal Procedure. Italy has ratified the Convention on the 5<sup>th</sup> October 2009.

In particular, the scope of article 322 bis of the Criminal Code (CC) (Embezzlement, graft, corruption and incitement to bribery of members of the European Communities and officials of the European Communities and of foreign States) has been extended providing for the incrimination of foreign bribery also when the benefit is given in order to obtain or retain business or other utility<sup>3</sup>.

Moreover, following the introduction of two new articles in the Code of Criminal Procedure (article 740-bis, entitled "Devolution to a foreign state of assets seized" and article 740-ter, "Order of devolution"), confiscated assets can now be returned from Italy to the State which has issued the judgment or the confiscation measure under the condition of the request from this latter and the recognition by an Italian Court of the judgment or of the measure.

- g) **Legislative Decree no. 39 of 27 January 2010** (Implementation of Directive 2006/43/CE, relating to the legal revisions of annual accounts and of consolidated accounts, which amends Directives 78/660/CEE and 83/349/CEE, and which abrogates Directive 84/253/CEE") introduced the specific incrimination of bribery in the exercise of the statutory audits.

Therefore, auditors who, following the bestowal or the promise of utility, perform or omit acts in violation of obligations arising from their duties, and causing harm to society, shall be punished with imprisonment up to three years. The same penalty applies to those who gives or promises the utility. In a public interest entity, auditors, components of the board, shareholders and employees who, in the exercise of the statutory audit, fulfil or omit acts in breach of the obligations of the office, are submitted to a penalty of imprisonment from one to five years. The same penalty applies to those who give or promise the utility.

- h) **Decree of the Ministry of Justice of 16 April 2010** (Definition of anomaly indicators to help some categories of professionals and auditors to identify suspicious money laundering transactions) issued specific "anomaly indicators" for the persons listed in Article 12 and 13(1)(b) of Legislative decree 231/2007.

The persons interested by these provisions, when acting in the exercise of their professional activities, are the following: auditors, external accountants and tax advisors, notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client. The Decree provides for the definitions (art. 1), the scope (art. 2), the anomaly indicators (art. 3) and the obligation to report suspicious transactions (art. 4).

### ***Other information***

#### ***Relevant authorities***

- (i) The Public Prosecutor's offices, which are organised on a territorial basis, to which information and complaints on bribery are referred and which conduct investigations in this field and prosecute cases in the courts;

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<sup>3</sup> Article 3. Amendments to the Criminal Code: The following words are added at the end of Article 322-bis, paragraph 2, number 2) of the Criminal Code: «or in order to obtain or maintain an economic or financial activity».

- (ii) The Judicial Police, which receives information and complaints on bribery and conduct the relevant investigations under the supervision of the Public Prosecutor's office;
- (iii) On October 2, 2008, a Decree of the Prime Minister, assigned the competences of the former High Commissioner for the prevention and the fight against corruption and other forms of offences in the Public Administration<sup>4</sup> to the Department of the Public Administration, which in this period has been operating through the Servizio Anticorruzione e Trasparenza (S.A.eT.) (Anticorruption and Transparency Service).

After 12 months, the transition started with the abolition of the High Commissioner's Office, under art. 68, paragraph 6, letter a) of the decree-law No.112<sup>5</sup>, has been completed. As a matter of fact, the passage of law No. 15 of March 4, 2009 followed by the legislative decree No. 150 of October 27, 2009 and the ratification of the UN Convention against Corruption<sup>6</sup> with law No. 116<sup>7</sup> of August 3, 2009, laid the foundations to strengthen, consistently with the deep process of renewal of the Public Administration started by the Government, the system to protect integrity and fairness of the administrative action.

The ratification of the UN Convention took place when the Legislature was carrying out an extensive and incisive reform and reorganization policy of the structure of the Public Administration to defend the integrity, legitimacy, proper and fair operation and efficiency of administrative policies, as enshrined in the Constitution.

In this context, the provision in art. 6 of the ratification law, entitled "*National Anticorruption Authority*", takes on considerable significance. It intends to enforce the Convention provision under which States shall ensure the existence of one or more bodies with specific competences and tasks in the field of corruption prevention. In accordance with above mentioned article of the Convention, the Parliament appointed as National Authority, "*the subject on whom the competences of the High Commissioner for the prevention and fight against corruption and other forms of offences in the public administration were devolved, under article 68, paragraph 6-bis, of the decree-law No. 112 of June 25, 2008, passed with amendments as law No. 133 of August 6, 2008*", that is to say, in the light of the current organizational structure resulting from the regulatory framework in force, to the Department of the Public Administration that has been operating through S.A.eT.

The guarantee, explicitly provided for by legislators, that this unit carries out its activity concretely as an autonomous and independent body, exceedingly strengthens the national activity in this specific matter, as it is already the case in other Countries that provided for an Authority "close to" the Executive Power. This choice is deemed to be opportune for two reasons: the

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- 4 . Established by article 1 of law No. 3 of January 16, 2003. Competences were defined by a subsequent regulation passed with a decree of the President of the Republic No. 258 of 2004.
  - 5 . The decree entitled "Urgent provisions for economic development, simplification, competitiveness, stabilization of public finances and fiscal equalization", was passed as law No. 133 of August 6, 2008.
  - 6 . Adopted by the General Assembly with resolution No. 58/4 of October 31, 2003 and opened in Merida for signature by all States from December 9-11, 2003.
  - 7 . Entitled "Ratification and implementation of the United Nations Convention against Corruption, adopted by the UN General Assembly on October 31, 2003 with resolution No. 58/4, signed by the Italian State on December 9, 2003, as well as rules for national correction and amendments of the criminal code and of the code of criminal procedure". The parliamentary ratification procedure was begun with the submission of the bill A.C. 2551 by Ministers Brunetta, Alfano, Tremonti, Frattini, Maroni.

National Anticorruption Authority will benefit from the strength and the commitment of the Government and, in particular, from the role of the Minister for Public Administration and Innovation in this specific matter; while at the same time, it will be thus possible to avoid the functional and economic conditioning several High Commissioners for the fight against corruption deplored in the past.

The network-like organizational model *Hub&Spoke* chosen for the National Anticorruption Authority, just permits to maximize the efficiency of management on the one side, while on the other side it permitted to enhance produced synergies, particularly in the exchange of information, using the small SAeT unit as a *hub* and promoting, with memoranda of understanding and agreements with a variety of institutions, the *spokes*, access to the *know-how* of Italian and foreign stakeholders.

#### *Relevant Internet links to national implementing legislation*

[www.gazzettaufficiale.it](http://www.gazzettaufficiale.it);  
[www.giustizia.it](http://www.giustizia.it)  
[www.giustizia.it/normeinrete](http://www.giustizia.it/normeinrete);  
[www.innovazionepa.gov.it](http://www.innovazionepa.gov.it)  
[www.innovazionepa.gov.it/media/572124/ref\\_saet\\_270710.pdf](http://www.innovazionepa.gov.it/media/572124/ref_saet_270710.pdf)  
[www.innovazionepa.gov.it/ministro/pdf\\_home/saet\\_ing.pdf](http://www.innovazionepa.gov.it/ministro/pdf_home/saet_ing.pdf)  
[www.normattiva.it](http://www.normattiva.it)  
[www.parlamento.it](http://www.parlamento.it)

#### *Signature/Ratification of other relevant international instruments*

- Convention on the Protection of the European Communities' Financial Interests (signed on 26 July 1995, ratified by Act 300/2000)
- First Protocol on the Convention on the Protection of the European Communities' Financial Interests (signed in Dublin on 27 September 1996, ratified by Act 300/2000)
- Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union (signed on 26 May 1997, ratified by Act 300/2000)
- Second Protocol on the Convention on the protection of the European Communities' financial interests (signed on 19 June 1997, ratified by Act No. 135/2008);
- Convention of the Council of Europe on Corruption (signed on 27 January 1999)
- UN Convention on Transnational Organized Crime (signed on 14 December 2000) ratified by Act No. 146/2006);
- UN Convention on Corruption (signed in December 2000), ratified by Act No. 116/2009).

#### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of implementation of the Convention and 1997 Recommendation (April 2001)  
<http://www.oecd.org/dataoecd/39/61/2019055.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (November 2004)

<http://www.oecd.org/dataoecd/0/50/33995536.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (March 2007)

<http://www.oecd.org/dataoecd/30/36/38313133.pdf>

## **JAPAN**

*(Information as of 9 June 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Japan signed the Convention on December 17, 1997, and deposited the instrument of acceptance with the OECD on 13 October 1998.

### ***Implementing legislation***

On 18 September 1998, Japan enacted implementing legislation in the form of amendments to the Unfair Competition Prevention Law, which came into force on February 15, 1999.

The purpose of this Law is by providing for measures for the prevention of, and compensation for damages from unfair competition, etc. in order to ensure fair competition among entrepreneurs and the full implementation of international agreements related thereto, and thereby to contribute to the wholesome development of the national economy.

In 2001, Unfair Competition Prevention Law (UCPL) was amended to meet part of the recommendations under Phase 1 by 1) removing the so-called “Main office” exception from “UCPL”, and 2) by broadening the definition of foreign public officials in relation to public enterprises, as well as by enacting a government ordinance.

In January 2005, an amendment to the UCPL came into force to extend nationality jurisdiction under article 3 of the Penal Code to the offence of bribing a foreign public official under the UCPL. Article 3 of the Penal Code does not require dual criminality, so that the briber is punishable even if the conduct is not criminalised in the foreign State where it occurred.

In June 2005, the Diet passed an amendment extending the statute of limitations for natural persons to five years. At the same time, and in order to facilitate the extension, the Diet passed an amendment that increased the sanctions for natural persons convicted of foreign bribery. The fine sanction was increased from a maximum of 3 million yen to 5 million yen, and the maximum sentence of imprisonment was increased from three to five years. In addition, natural persons can now be sentenced to both a fine and imprisonment, whereas previously only one or the other penalty was available. Also increase the statute of limitation in respect of legal persons for the foreign bribery from three to five years.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

#### ***Relevant laws***

- *Penal Code*
- *Code of Criminal Procedure*
- *Whistleblower Protection Act*
- *Act on Prevention of Transfer of Criminal Proceeds*
- *Financial Instruments and Exchange Act*
- *Companies Act*
- *Income Tax Law*
- *Corporation Tax Law*
- *Law for International Assistance in Investigation and other Related Matters*

- *Law of Extradition*
- *Law for Judicial Legal Assistance to Foreign Courts*

### ***Other information***

#### *Relevant authorities*

- Ministry of Economy, Trade and Industry
- Ministry of Justice
- Ministry of Foreign Affairs
  
- Consumer Affairs Agency
- National Police Agency
- Financial Services Agency
- Ministry of Finance

#### *Relevant Internet links to national implementing legislation, for example*

<http://law.e-gov.go.jp/htmldata/H05/H05HO047.html> (Japanese only)

#### *Signature/Ratification of other relevant international instruments*

1. December 2000, signature of the United Nations Convention against Transnational Organized Crime.
2. December 2003, signature of the United Nations Convention against Corruption.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (May 2002)

<http://www.oecd.org/dataoecd/15/21/2387870.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2005)

<http://www.oecd.org/dataoecd/34/7/34554382.pdf>

Phase 2bis: Second report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2006)

<http://www.oecd.org/dataoecd/54/23/37018673.pdf>

Phase 2bis: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2007)

<http://www.oecd.org/dataoecd/49/44/39591489.pdf>

## **KOREA**

*(Information as of 28 November 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of ratification was deposited with the Secretary General of the OECD on 4 January 1999.

### ***Implementing legislation***

- The “Act on Preventing Bribery of Foreign Public Officials in International Business Transaction” (FBPA) was enacted on 28 December 1998 and came into effect at the time of the entry into force of the Convention i.e. on 15 February 1999.
- To implement the Convention, Korean Government enacted the FBPA, which criminalizes the bribery of a foreign public official in international business transactions and contains provisions on the responsibility of legal persons and confiscation.

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations***

#### ***The Act on International Mutual Legal Assistance in Criminal Matters***

- adopted by the National Assembly on 8 March 1991, came into force on 8 April 1991.
- promotes an international cooperation in the repression and prevention of crimes, by providing the scope, procedure, etc. of mutual legal assistance in criminal matters made at the request of, and requesting to, any foreign country in connection with any investigation or trial of a criminal case.

#### ***The Extradition Act***

- adopted by the National Assembly on 5 August 1998, came into force on the same day.
- promotes an international cooperation in the repression of crimes by providing for the scope, procedures, etc. of extradition.

#### ***The Financial Transaction Reports Act***

- adopted by the National Assembly on 3 September 2001, came into force on 28 November 2001.
- stipulates the establishment of a Financial Intelligence Unit (FIU) and requires financial institutions to report information on suspicious financial transactions to the FIU.

#### ***The Proceeds of Crime Act***

- adopted by the National Assembly on 3 September 2001, came into force on 28 November 2001.



- makes money laundering an offence in relation to bribery of domestic and foreign public officials

*The Act on Special Cases Concerning Confiscation and Recovery of Stolen Assets*

- adopted by the National Assembly on 26 February 2008, came into force on 26 April 2008.
- prescribes for confiscation of proceeds from “corrupt offenses” including foreign bribery.
- provides for international cooperation in asset recovery

*The Anti-Corruption Act*

- adopted by the National Assembly on 28 June 2001, came into force on 25 January 2002.
- creates the “Korea Independent Commission Against Corruption (KICAC)”. This body seeks to improve the legal framework for anti-corruption, to formulate and enforce anti-corruption laws and policies, and respond to whistleblowing.
- has been integrated into the Act on Anti-Corruption & the Establishment and Operation of the Anti-Corruption and Civil Rights Commission as of 29 February 2008.

*The ACT on Anti-Corruption & the Establishment and Operation of the Anti-Corruption and Civil Rights Commission*

- adopted by the National Assembly on 26 February 2008, came into force on 29 February 2008
- creates the "Anti-Corruption and Civil Rights Commission (ACRC)". This government agency was launched by the integration of the Korea Independent Commission Against Corruption, Ombudsman of Korea and the Administrative Appeals Commission.
- this government agency is in charge of formulating and coordinating national anti-corruption policies, protecting and rewarding whistle-blowers, and improving the laws and regulations.

*The Act on the Protection of Public Interest Whistleblowers*

- adopted by the National Assembly on 11 March 2011, came into force on 30 September 2011
- protects public interest whistleblowers in both public and private sectors.

***Other information***

*Relevant authorities*

- Ministry of Justice ([www.moj.go.kr](http://www.moj.go.kr))
- Ministry of Strategy and Finance ([www.mosf.go.kr](http://www.mosf.go.kr))
- Anti-Corruption and Civil Rights Commission of Korea ([www.acrc.go.kr](http://www.acrc.go.kr))

- Ministry of Economy and Finance ([www.mofe.go.kr](http://www.mofe.go.kr))
- Ministry of Foreign Affairs and Trade ([www.mofat.go.kr](http://www.mofat.go.kr))
- National Tax Service ([www.ntg.go.kr](http://www.ntg.go.kr))
- Anti-Corruption and Civil Rights Commission of Korea ([www.acrc.go.kr](http://www.acrc.go.kr))

*Relevant internet links to national implementing legislation*

- <http://search.assembly.go.kr:8080/law>

*Signature/Ratification of other relevant international instruments*

- Korea signed the United Nations Convention Against Transnational Organized Crime on 13 December 2000
- Korea signed the United Nations Convention Against Corruption on 10 December 2003 and ratified it on 29 February 2008. The Convention entered into force on 26 April 2008.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (July 1999)  
<http://www.oecd.org/dataoecd/15/6/2388296.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (November 2004)  
<http://www.oecd.org/dataoecd/17/13/33910834.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (March 2007)  
<http://www.oecd.org/dataoecd/34/15/38239546.pdf>

Phase 3: Report on the Implementation and Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and 2009 Recommendations on Further Combating Bribery (October 2011)  
<http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/48897608.pdf>

***Updates on Enforcement Actions***

On 13 May 2011, the Inchoen District Prosecutors' office indicted CEO of a Korean business and a president of a local office of a foreign enterprise for giving and receiving bribery in connection with securing a favourable transaction terms. The case is pending at the Incheon District Court. (More updates and details will be provided at a later stage).

## LUXEMBOURG

*(Information as of 29 February 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

On 17 December 1997, the Grand Duchy of Luxembourg signed the OECD Convention of 21 November 1997 on bribery of foreign public officials. The Convention was approved by Luxembourg by an Act of 15 January 2001, adopted by the Luxembourg parliament on 14 December 2000, and confirmed and promulgated by the Grand Duke on 15 January 2001. The Act entered into force on 11 February 2001. The Grand Duchy of Luxembourg deposited its instrument of ratification with the OECD on 21 March 2001. The Convention came into force in Luxembourg 60 days after that date.

### ***Implementing legislation***

The Act of 15 January 2001 introduces into Luxembourg law, or modifies, the notions of misappropriation, destruction of deeds and securities, embezzlement, taking unlawful interest, and bribery. Amendments were made to the Criminal Code and the Criminal Investigation Code and to the Act of 4 December 1967 on income tax.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

Since then, the following laws and regulations have been adopted:

- Act of 30 March 2001 approving:
  1. the Convention, based on Article K.3 of the European Union Treaty on the **Protection of the Financial Interests of the European Communities**, signed in Brussels on 26 July 1995;
  2. the Protocol, based on article K.3 of the European Union Treaty, to the Convention on the Protection of the Financial Interests of the European Communities, signed in Dublin on 27 September 1996;
  3. the Protocol, based on article K.3 of the European Union Treaty, on the preliminary interpretation by the Court of Justice of the European Communities of the Convention on the Protection of the Financial Interests of the European Communities, signed in Brussels on 29 November 1996 and amending other legal provisions.

In addition to approving these three instruments, the Act amended the Criminal Code so as to make it an offence to engage in any misappropriation of subsidies, indemnities or allocations or in any fraudulent acts or manœuvres designed to reduce illegally an international institution's contribution to the budget.

- Act of 23 May 2005 approving:
  1. the Convention, based on article K.3 of the European Union Treaty, on **the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union**, signed in Brussels on 26 May 1997;

2. the second Protocol, based on article K.3 of the European Union Treaty, to the Convention on the Protection of the Financial Interests of the European Communities, signed in Brussels on 19 June 1997;
3. the Criminal Law Convention on Corruption, signed in Strasbourg on 27 January 1999;
4. the Additional Protocol to the Criminal Law Convention on Corruption, signed in Strasbourg on 15 May 2003;

and amending and completing certain provisions of the Criminal Code.

This Act transposed into Luxembourg law all the instruments relating to the punishment of corruption under the criminal law adopted by the European Union and the Council of Europe in the years 1997-2003, including the Framework-Decision 2003/568/JAI of the Council of 22 July 2003 on combating corruption in the private sector, by introducing into the Criminal Code Articles 310 and 310-1 which make corruption in the private sector a criminal offence.

- Act of 1 August 2007: 1. approving the **“Merida” Convention of the United Nations Against Corruption**, adopted by the General Assembly of the United Nations in New York on 31 October 2003 and opened for signature in Merida (Mexico) on 9 December 2003; 2. amending Section 12.5 of the Income Tax Act of 4 December 1967, as amended.

This Act approved the Convention in question and set up the Corruption Prevention Committee (« COPRECO ») in Luxembourg. COPRECO is an interministerial body responsible in particular for preparing and proposing to the Government measures to combat corruption and for co-ordinating within the public administration the enforcement of any measures adopted.

- Act of 18 December 2007 approving the **“Palermo” Convention of the United Nations against transnational organized crime**, adopted by the General Assembly of the United Nations in New York, on 15 November 2000.
- Grand-Ducal Regulation of 15 February 2008 determining the **composition and functioning of the Corruption Prevention Committee**.

This Regulation lays down the rules relating to the composition and functioning of the Corruption Prevention Committee, in implementation of the legal provision setting up the Committee, i.e. Section 2 of the Act of 1 August 2007 approving the « Merida » Convention of the United Nations against corruption, adopted by the General Assembly of the United Nations in New York on 31 October 2003.

- Act of 17 July 2008 **transposing Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing**, transposing Directive 2006/70/EC of the Commission of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of “politically exposed persons” and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and amending:
  1. the Act of 12 November 2004 on combating money laundering and terrorist financing, as amended;
  2. the Act of 7 March 1980 on organisation of the judiciary, as amended;
  3. the Act of 5 April 1993 on the financial sector, as amended;

4. the Act of 6 December 1991 on the insurance sector, as amended;
5. the Act of 9 December 1976 on organisation of the profession of notary, as amended;
6. the Act of 10 August 1991 on the profession of barrister, as amended;
7. the Act of 28 June 1984 on organisation of the profession of company auditor, as amended;
8. the Act of 10 June 1999 on the organisation of the profession of accountant.

This Act transposes into Luxembourg law the 3rd money laundering Directive (dealing with professional obligations) and introduces in particular a legal definition of the concept of “politically exposed persons”. Inasmuch as the offence of bribery is one of the primary offences of money laundering, this Act helps to reinforce the fight against corruption.

- Act of 17 July 2008 on the **fight against money laundering and terrorist financing**, and amending:
  1. Article 506-1 of the Criminal Code,
  2. the Act of 14 June 2001
    1. approving the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed in Strasbourg on 8 November 1990;
    2. amending certain provisions of the Criminal Code;
    3. amending the Act of 17 March 1992;
      1. approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988;
      2. amending and completing the Act of 19 February 1973 on the sale of drug substances and the fight against drug addiction;
      3. amending and completing certain provisions of the Criminal Investigation Code.

This Act adapts the criminal offence of money laundering in Luxembourg law to the requirements laid down in the 3rd money laundering Directive in particular.

- Act of 4 February 2010 introducing **the responsibility of legal persons** in the Criminal Code, and amending the Criminal Code , the Criminal Procedure Code, and certain other legal provisions.

This Act aims to bring Luxembourg in compliance with the requirements under the OECD Convention of 21 November 1997 on Bribery of Foreign Public Officials in International Business Transactions in general, and with the Phase 2 and Phase 2bis evaluation reports in particular, by picking up the recommendations adopted by the Working Group on Bribery.

- Bill of 25 January 2010 **reinforcing the means to combat bribery** and amending (1) the Labour Code; (2) the general statute applicable to State officials; (3) the amended Act of 24 December

1985 on the general statute applicable to local officials; (4) the Code of Criminal Procedure; and (5) the Criminal Code.

This Bill will enable, once it is passed into law, the effective protection of whistleblowers in the public and private sector, in conformity with the requirements under the OECD Anti-Bribery Convention in general, and the Phase 2 and Phase 2bis evaluation reports in particular.

1) Act of 27 October 2010 reinforcing the legal framework on the fight against money laundering and terrorist financing

This act adapts the laws and regulations on the fight against money laundering and terrorist financing to the recommendations of the mutual evaluation report on Luxembourg of the Financial Action Task Force (FATF) .

2) Act of 27 October 2010 on mutual legal assistance in criminal proceedings

This act ratifies the EU Convention on mutual legal assistance in criminal proceedings (29 May 2000) and its Protocole (16th October 2001) and adapts the existing legal provisions.

3) Act of 13 February 2011 reinforcing the means to combat bribery and amending (1) the Labour Code, (2) the general statute applicable to state officials, (3) the general statute applicable to local officials, (4) the Code of criminal procedure and (5) the Criminal Code.

This act enables the effective protection of whistleblowers in the public and private sector. [cette disposition figure dans l'ancien document sous projet de loi]

4) Act of 10 July 2011 incriminating the obstruction of justice

This act forsee a penalty for the person, who knows about a crime whose effects could still be prevented or limited or whose perpetrators are likely to commit other crimes that could be prevented, and who doesn't inform the judicial or administrative authorities.

5) Draft grand-ducal regulation of 21 October 2011 introducing a Code of conduct for public officials

This regulation will, once it enters into force, introduce a very strict code of conduct defining clear rules concerning e.a. gifts, accessory activities, transfer to the private sector...

6) The Government contributes to the financing of the anti-corruption hotline launched by Transparency International (TI) Luxembourg on 10th December 2011 by providing e.a. office space and forsee to grant TI Luxembourg the right to launch class actions in corruption matters.

### ***Other information***

The competent authorities in the fight against corruption are the Grand Duchy police, the public prosecutors and the examining magistrates.

The central authority for mutual legal assistance is the Prosecutor General (Section 2 of the Act of 8 August 2000 on mutual legal assistance).

On 18 July 2008, the Government adopted a plan of action against corruption. The objective of this plan is use « COPRECO » to co-ordinate all the anti-corruption measures existing at national level in order to make them more effective.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (February 2001)  
<http://www.oecd.org/dataoecd/39/40/2019732.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2004)  
<http://www.oecd.org/dataoecd/55/4/32017636.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (August 2006)  
<http://www.oecd.org/dataoecd/22/27/37308306.pdf>

Phase 2bis: Second report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2008)  
<http://www.oecd.org/dataoecd/4/21/40322335.pdf>

Phase 2bis: Follow-up Report on the Implementation of the Phase 2bis Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)  
<http://www.oecd.org/dataoecd/55/21/44023684.pdf>

## MEXICO

*(Information as of 28 November 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Mexico signed the Anti-Bribery Convention on December 17th, 1997, and deposited its instrument of ratification with the OECD Secretary-General on May 27th, 1999.

The Convention was approved by the Mexican Senate on April 22nd, 1999. It was then published in the Federal Official Journal (DOF for its acronym in Spanish) on May 12th, 1999, and entered into force on July 26th, 1999.

### ***Implementing legislation***

In order to implement the Convention, Mexico enacted an amendment to the Federal Criminal Code (acronym in Spanish CPF) on May 17th, 1999, which came into force the following day.

Mexico amended the CPF by adding Article 222 bis, which established the offence “bribing foreign public officials” and addressed the issue of third party beneficiaries. This was published in the Federal Official Journal on August 23rd, 2005.

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or Recommendations.***

On March 13th, 2002, several amendments to the Federal Law on Administrative Responsibilities of Civil Servants (acronym in Spanish LFRASP) were approved. These reforms aim at preventing illicit conduct by national public officials, and provide the Ministry of Public Administration with the necessary legal tools to guarantee a more efficient application of the law. It establishes provisions to verify and examine the evolution of national public officials' assets.

Regarding the measures to improve the detection of foreign bribery, in 2004, the Federal Attorney-General created the Special Prosecutor’s Office for Combating Corruption in the Federal Attorney-General’s Office (decree A/106/04), to investigate and prosecute corruption offences committed by public officials of this Institution. Furthermore, under decree A/107/04, the Mexico’s Attorney-General established the Special Prosecutor’s Office for Combating Corruption in the Federal Public Service, aimed to investigate and prosecute crimes related to acts of corruption in the federal public service; as well as those related to the bribery of public officials, as set forth in article 222 bis of the Federal Criminal Code.

On December 14th, 2005, the Federal Congress approved an amendment to Article 117 of the Credit Institutions Law with the purpose of empowering the Public Prosecutor’s Office to access information related to trusts managed by the National Banking and Securities Commission (acronym in Spanish CNBV). The amendment was published in the Federal Official Journal on December 30th of the same year. The main objective of the amendment was to allow the judicial authorities to request to the financial institutions, directly or through the CNBV, for financial information deemed necessary, and to allow the Attorney-General’s Office to request financial information directly from financial institutions, based on a warrant.

On July 8th, 2005, various amendments and additions to the Laws on Procurement and Public Works were approved by Congress and went into effect, as for instance:



- a) The terms of tender were modified in order to prevent companies or individuals from evading disqualification warrants by creating new companies or by having partners participate in bids.
- b) Participants in a contracting procedure have to make a sworn statement that no natural or legal persons that have been disqualified under the terms of these laws are participating.
- c) Bids may not be submitted or contracts signed by natural or legal persons that have used confidential information provided improperly by public officials or their family members by blood or by affinity, or in-laws, or anyone contracted for advisory, consulting or support services, if proved that all or part of the remuneration paid to the service provider is transferred to public officials or to third parties.

Legislative amendments have been made to the Law of Acquisitions, Leasing and Services of the Public Sector. The initiative makes more flexible the process of objections to tenders, calls, meetings and bases for clarification of procedures on public procurement. The amendments were approved by the Senate on April 30th 2009.

In administrative scope, the Ministry of Public Administration drafted the Regulation of the Law of Acquisitions, Leases and Services of the Public Sector, which was published in the Federal Official Journal on July 28, 2010. In this regard, highlights relevant aspects of amendments to this Regulation as follow:

- The regulatory framework contracts as a mechanism to harness the power of public procurement.
- The accuracy of the aims, sources and use of market research to be conducted prior to the selection of the public procurement process.
- The limitation of the policies, rules and guidelines on the subject issued by the agencies, to avoid over domestic regulation.
- The facilitation and speed of the consolidation process in acquisitions, leases and services, as another mechanism to get the best deal for the State.
- The general framework governing the use of subsequent offers discount modality, stating which will be applied in electronic bidding.
- The holistic regulation given to social witness figure to contribute efficiently to strengthening the transparency, impartiality and legality of public procurement procedures.
- The definition of the minimum information to integrate the National Register of Suppliers and the procedure to add information to it.

The Income Tax Law (LISR) establishes in article 31 (Annex 2), the requisites that the authorized deductions should meet, which should be “strictly indispensable for the purposes of the taxpayers activity” (section I). Likewise, article 32 the law hereby (Annex 5) establishes the type of entries that cannot be deductible, among which the following stand out “the gifts, attentions and other expenses of similar nature except for those that are directly related to the transfer of goods or providing services and which are offered to customers in a general way” (Section III) and “the representation expenses” (fraction IV).

It should be pointed out that on May 27, 2010 Mexico adhered to the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and the European Council, which will allow access

to a wide network of international cooperation, for the exchange of information in tax matters and to combat evasion in tax payments.

### *Politically-Exposed Persons (PEP)*

According to Anti-Money Laundering (AML) regulations, Financial Institutions (FI) are required to classify customers from low to high risk, and in particular categories of customers as high risk, among others as Politically-Exposed Persons (PEP) -both foreign and Mexican-.

In order to assign the degree of risk and to determine whether a customer is a PEP, FIs should establish criteria that take into account, inter alia, the customer's background, profession, activity or line of business, the source of funds, etc. This should include procedures to rank transactions conducted by Mexican PEPs in accordance with the degree of risk.

Pursuant to its powers under the regulations, on December 2011, the Ministry of Finance issued a list of public positions that have to be considered to define Mexican PEPs, which includes, among others: members of the House of Representatives, senators, justices of the Supreme Court, advisors of the Federal Judiciary, dispatch secretaries, chiefs of administrative departments, the head of the government of the Federal District, attorney generals and district attorneys, circuit court magistrates and district court judges, and directors general or their equivalents of decentralized agencies, companies controlled by the state, other similar companies, associations and public trusts as well as state governors. The list aim is to serve as a basis for FIs to develop their own lists, adding other public officers they deem pertinent.

The list is available in the link below:

[http://www.hacienda.gob.mx/LASHCP/MarcoJuridico/InteligenciaFinanciera/Paginas/marco\\_juridico.aspx](http://www.hacienda.gob.mx/LASHCP/MarcoJuridico/InteligenciaFinanciera/Paginas/marco_juridico.aspx)

### *Legislative Developments, including Current Draft Legislation*

The Federal Executive presented to Congress several bills, which will contribute to enhance the fight against corruption, bribery and money laundering. These initiatives are:

1. Federal Anti-Corruption Law in Public Procurement Initiative (Anti-Corruption Bill) became effective on June 12, 2012. The Law establishes liabilities and penalties on foreign and Mexican individuals and corporations who directly or indirectly engage in actions or omissions aimed at achieving an unlawful advantage when procuring public contracts with the Mexican federal government. The Anti-Corruption Law also regulates the procedure for imposing sanctions and charges the Ministry of Public Administration with the responsibility for conducting investigations and with imposing sanctions under the law.
2. Federal Law for the Prevention and Identification of Transactions with Criminal Proceeds and Financing of Terrorism, was published in the Federal Official Gazette on October 17, 2012, and will come into effect nine month after the mentioned date (July 17, 2012). The objective of the Law is to protect the Mexican financial system and national economy by establishing measures and procedures for preventing transactions that involve illicit proceeds through an inter-institutional coordination. Moreover it establishes elements for the investigation and prosecution of ML and related crimes, and catalog activities that are vulnerable to be used for ML, in accordance with AML/CFT international standards (FATF Recommendations) in order to identify customers or users that perform vulnerable activities. The Law also establishes the filing of notices before the Secretariat of Finance and Public Credit through the Financial Intelligence Unit and restricts the buying/selling of certain transactions with cash.

3. Bill of Decree that amends different articles of the Federal Law of Administrative Responsibilities of Public Officials, presented to Congress on March 3<sup>rd</sup> 2011. This Bill is pending discussion and approval by the Chamber of Deputies.
4. Bill of Decree by means of which several regulations of the Federal Criminal Code and the Federal Code of Criminal Procedures are Amended, Added or Derogated, that was introduced to Congress on April 14th 2011, has been turned to the United Commissions of Justice and the Commission of legislative Studies, and is pending report law.
5. Notwithstanding there is also a Bill of Decree by which the Federal Criminal Code, the Federal Criminal Procedures Code and the Federal Law Against Organized Crime are amended (*related to the criminalization of terrorism and terrorism financing, among other*) This Bill was presented within the Senate on April 24, 2012. The Bill, currently under analysis and discussion at the Senate seeks, among other, to modify the current criminalization of terrorism and terrorism financing in order to make it fully consistent with the international standards.

New AML/CFT General Provisions were issued and amended by the Secretariat of Finance and Public Credit, expected to satisfy the FATF recommendation also in regards to the significant legal and capacity deficiencies in implementing CDD requirements for those entities:

- General Provisions applicable to banking institutions: issued on April 20, 2009, and amended on June 16, 2010, September 9, 2010, December 20, 2010, and August 12, 2011.
- General Provisions applicable to foreign exchange houses: issued on September 25, 2009, and amended on September 9, 2010, and December 20, 2010.
- General Provisions applicable to foreign exchange centers: issued on September 25, 2009, and amended on April 10, 2012.
- General Provisions applicable to money remitters: issued on December 17, 2009 and amended on April 10, 2012.
- General Provisions applicable to securities brokerage firms: issued on September 9, 2010, and amended on December 20, 2010.
- General Provisions applicable to limited purpose finance companies (also known as “SOFOLES”): issued on March 17, 2011.
- General Provisions applicable to regulated and unregulated multiple purpose finance companies (also known as “SOFOMES”): issued on March 17, 2011, and amended on December 23, 2011.
- General Provisions applicable to auxiliary credit organizations: issued on May 31, 2011.
- General Provisions applicable to insurance companies: issued on July 19, 2012.
- General Provisions applicable to bonding companies: issued on July 19, 2012.
- General Provisions applicable to credit unions: issued on October 26, 2012.

Moreover the Internal Regulations of the Secretariat of Finance and Public Credit were amended on October 12, 2012, in order to change among other matters the internal structure of the Financial Intelligence Unit to better adapt it to the necessities of the Unit.

### ***Awareness and training***

Since the adoption of the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions and Annex 2 of the Recommendation of 2009 of the Council for Strengthening the Fight against Bribery of Foreign Public Officials in International Business Transactions, Good Practices Guide on Controls, Ethics and Compliance, the Mexican authorities

have undertaken several initiatives to raise awareness of foreign bribery in international business transactions among the public and private sectors. Various ministries like Public Administration, Finance and Public Credit, Economy, PGR and governmental agencies developed specific brochures and e-mail newsletters on corruption:

With the purpose of promoting the implementation of mechanisms to prevent corruption in legal persons, the Ministry of Public Administration (SFP) has disseminated Annex II Guidelines of Best Practices on Internal Controls, Ethics and Compliance of the 2009 Recommendation on Further Combating Bribery in various forums related to the private sector. Among others, Annex II was distributed to associates of the Mexican Institute of Public Accountants (IMCP in Spanish), the Mexican Institute on Financial Executives (IMEF in Spanish), the Commission of Studies of the Private Sector for Sustainable Development and the Mexican Academy of Comprehensive and Performance Auditing (AMDAID in Spanish) through face to face meetings. Likewise, the Mexican government disseminated and/or discussed the content of Annex II in the following events:

1. Session of the International Chamber of Commerce Mexico (ICC) Board of Directors.
2. Business Integrity Workshop preparation meetings, organized by the Ministry of Economy together with the United States Department of Commerce. The meetings involved a series of encounters with representatives of the private and public sectors concerned with social corporate responsibility in Mexico
3. Seminar “How can the legal person fight corruption: international tools”, organized by ICC’s Mexico Anti-corruption Committee. This seminar also included the participation of a representative of the OECD and PricewaterhouseCoopers.
4. Business Integrity Workshop, organized by the Ministry of Economy together with the United States Department of Commerce.
5. 8th Social Responsibility International Congress, which took place in Mexico. Although several government and non-governmental institutions participated in the organization of this event, it was primarily organized by the National Committee of Productivity and Technological Innovation.
6. Seminar “Anti-corruption Strategy for the Legal Profession”, organized by the International Bar Association together with the Mexican College Bar of Lawyers, the OECD and the UN in Mexico.
7. Together with the OECD, presentation of the OECD Anti-Bribery Convention and Annex II to business and lawyer students in the Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM in Spanish) and the Instituto Tecnológico Autónomo de México (ITAM in Spanish)..
8. Seventh Anahuac University Symposium “The Ethics Dimension in Research”, participating with the speech “Ethics in Social Responsibility.”
9. Round Table to discuss 3B Recommendation, organized by the Ministry of Public Administration to discuss with auditing, accounting and legal profession’s representatives the recommendation to oblige auditors and accountants to report offences despite their rules on confidentiality.

On the other hand, to promote the internal controls, ethical and compliance measures or programs included in Annex II the Federal Anticorruption Law in Public Procurement initiative makes explicit reference to bribery prevention mechanisms which can be implemented by legal persons.

According to the content of this law initiative, legal persons will have training to establish self-regulating mechanisms allowing the prevention of fraud and corruption. These mechanisms include internal controls and an integrity program. The design of these mechanisms will be carried out according to the best international practices on controls, ethics and integrity in business and will include, among others, reporting tools and protection to reports.

The Mexican Government jointly with the Mexican College Bar of Lawyers, the National Association of Corporation Lawyers (ANADE), the Global Compact Mexico and the International Chamber of Commerce Chapter Mexico (ICC) is organizing a workshop to promote business integrity. The objective of the workshop is to raise awareness regarding the international instruments that have effect upon the legal persons that operate in Mexico, and to promote the business ethics through the dissemination of tools to prevent corruption and fraud.

This workshop is mainly aimed to small and middle sized legal persons that operate in Mexico.

The Module I “The International Anti-corruption Framework” of the workshop included an analysis of the effect of the United Nations Convention against Corruption, the Inter-American Convention against Corruption, the OECD Anti-Bribery Convention, North American anti-corruption legislation (Foreign Corrupt Practices Act) and the UK legislation in the issue (UK the Anti-bribery act), in consequence, obligations of Mexican legal persons in trade or investment transactions abroad will be covered.

Likewise, the workshop included in its Module V the initiatives aimed at the private sector for improving the integrity in the public – private interaction. This module addressed the content of the Good Practices Guide on Controls, Ethics and Compliance (Annex II) of the Recommendation of the Council for further Combating Bribery.

Dissemination of the poster on denounces and the three page leaflet of the OECD by institutional emails and in different areas of PGR.

Placing the poster on denounces of national and transnational bribery in strategic visible spaces in the national level, with the legend: “The good judge first puts his own house in order”. Likewise, 5,000 posters were placed with the title “The task is to prevent”, distributed in the different administrative units and state delegations of the institution, and in the Council of Citizens Participation (CPC) and its committees, an in the general justice attorney’s offices of the federal entities.

Dissemination of the 01 800 hotlines of the institution and the Council of Citizens Participation (CPC) for fostering the culture of report of corruption acts committed by the public officials of the institution, through 20,000 posters titled “No one can condition you”, the former with the purpose of rising awareness among the citizens regarding the importance of reporting the acts of corruption they are object of by the public officials.

Dissemination of the micro site of the Ministry of Public Administration on international anticorruption conventions, by placing the link [http://200.34.175.29:8080/wb3/wb/SFP/vinc\\_convenciones](http://200.34.175.29:8080/wb3/wb/SFP/vinc_convenciones) in the institutional website.

Dissemination of the electronic mail [denuncias\\_vg@pgr.gob.mx](mailto:denuncias_vg@pgr.gob.mx), in order to encourage the culture of report of crimes and corruption acts committed by public officials of the institution.

At the website of the institution the link <http://www.pgr.gob.mx/denuncia/denuncia.asp> was modified, it is called Citizen’s Denounce and with it complaints or denounces related to acts of corruption and bribery against public officials of the institution can be carried out. Likewise, the attributions of the VG

and the link <http://www.pgr.gob.mx/servicios/mail/plantilla.asp?mail=3> were published in the website. Here the electronic complaint mailbox of VG is located.

On December 9th, 2010, through the institutional mail, the celebration of the International Day against Corruption was disseminated. The day was established by the United Nations General Assembly with the purpose of encouraging the culture of rejection of corruption in all its forms.

In the initial courses given by the Institute of Training and Professionalization (ICAP) to police officials and experts, subjects on corruption and bribery fighting were included. In the same sense, PGR together with the Embassy of United States in Mexico imparted the course “Techniques of Detection and Investigation Crimes related to Corruption of Public Officials in the Public and Private Sectors”, in July, September and October, 2010.

Besides, through the National Institute of Criminal Science (INACIPE), PGR has imparted courses, seminars, conferences and workshops and published articles related to corruption fighting. Likewise, the books: *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos. Análisis Dogmático. (Federal Law on Administrative Responsibilities of Public Servants. Dogmatic Analysis)*, *Defraudación fiscal (Tax Evasion)* and *Técnicas y herramientas contra la delincuencia organizada (Techniques and Tools against Organized Crime)*. Furthermore, the curricula established for the master and graduate specialty courses offered by INACIPE, includes issues related to combating corruption and bribery as well as the International Anticorruption Conventions.

Business Integrity Workshop preparation meetings, organized by the Ministry of Economy together with the United States Department of Commerce. The meetings involved a series of encounters with representatives of the private and public sectors concerned with social corporate responsibility in Mexico. Audience: 50 representatives of foundations, business’ chambers and associations.

Business Integrity Workshop, organized by the Ministry of Economy together with the United States Department of Commerce. Audience: 30 representatives of small and middle size legal persons in Mexico.

The Tax Administration Service (acronym in Spanish SAT), as an organism of the Ministry of Finance has implemented the following awareness raising activities to prevent foreign bribery:

1. The SAT implemented the Bribery Awareness Handbook for Tax Examiners of the OECD, as part of its internal guidelines applicable during fiscal revisions of the taxpayers, with strict observance of the politics and criteria established by the international organization and it is known in Mexico as the “Tax Examiners Guide for the Detection of National and International Bribery“..
2. On July 2007, the Mexican Government through the SAT imparted a nation-wide training course on “Detecting Trans-national Bribery in Fiscal Revisions”, in which a total of 1994 public officials from 66 SAT Local Administrations of Fiscal Auditing were trained.
3. To raise awareness of foreign bribery, the SAT undertook a nation-wide campaign in 2007 among public officials through different electronic means, and on August 2007, a massive e-mail message was sent through different data bases to a total of 4,556,689 taxpayers. In December 2008, an electronic brochure and poster showing information on the International Anti-Corruption Conventions were disseminated to a total of 5,436,820 taxpayers.
4. In addition the SAT held lectures, jointly with private sector associations (National Association of Corporate Lawyers and Business Confederation of México) and with Taxpayers Representatives.

5. On October 2008 the SAT participated, with two expositors, in the *Seminar on bribery Awareness for Tax Examiners*, under the framework of the Co-operation Programme with No Members Economies of the OECD in Latin America and the Caribbean, organised by the OECD Committee on Fiscal Affairs and the Multilateral Tax Center of the Ministry of Finance of México
6. In 2009 the SAT presented The Mexican experience in raising bribery awareness for tax examiners in the plenary meeting of the Working Party No. 8 on Tax Avoidance and Evasion of the OECD Committee on Fiscal Affairs in Paris, France, and in the meeting of the Advisory Group for Cooperation with non-OECD Economies in Fes, Morocco.
7. On September 2009, the institution participated in the “*Seminar on counteracting Bribery and Corruption from a Tax Perspective*” in Moscow, Russia, in order to share its experiences in the fight against corruption and international bribery
8. During 2009, the SAT added a new site on the international anticorruption conventions of the OECD, UN and OAS to its internal webpage (*Intrasat*) in order to increase awareness on the Conventions among public officials
9. The SAT also issued several messages on international anticorruption conventions in its electronic magazine *Comunidad SAT*, which is distributed vía email, to around 28,000 public officials.
10. Early December 2009, the SAT’s national awareness raising campaign was reinforced with the distribution of the new brochures and posters, in all the 66 Local Administrations of Taxpayer’s Services, 49 Customs and all the Central Offices at the beginning of 2010, were distributed in the 9 Regional Offices of the Administration of Evaluation.
11. On July, 2010, it was approved and published the updated version of the document *Strategies to Detect National and International Bribery*. This new version is part of the *Strategies of Fiscalization for Tax Examiners (EFA’s) and includes the 2009 Council Recommendations on Tax Measures for Further Combating Bribery of Foreign Public Officials*.
12. In 2010, the SAT published a banner in its website that says: *National and International Bribery, Denounce them!* In order to strengthen the culture of complaint among taxpayers and the General Public.
13. As part of the Global raising campaign against foreign bribery, the OECD banner “*Foreign Bribery: Who pays the price?*” was uploaded on the SAT’s anticorruption website. Additionally, the Annex II “*Good practice guidance on Internal Controls, Ethics, and Compliance*” was published. In January 2011, a list of non deductible expenses based on articles 32 and 173 of the Income Tax Law were also published in the website in order to promote this information among taxpayers and citizens in general.
14. In March 2011, a videoconference entitled *Detecting National and Trans-national Bribery* was transmitted to 3,545 tax examiners of the General Administration of Federal Fiscal Auditing (AGAFF), as part of the training program implemented in the Tax Administration Service. This videoconference disseminates the different topics of the Strategies for Detecting National and International bribery. The transmission has been done through the program “Aprende” in *IntraSAT*, which has easy access for SAT’s public officials.

In the framework of the phase 3 evaluation on the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Tax Administration

Service worked with the Ministry of Finance and the Ministry of the Public Administration, to respond the questionnaire in topics related to tax.

15. In order to comply with the recommendations of the Working Group on Bribery to the Tax Administration Service (SAT) during the Mexican phase 3 evaluation of the Anti-Bribery Convention, held on October 2011 this institution has implemented the following actions:

As a part of the implementation of the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions, on July 23 2012, SAT's Legal Regulations Committee approved a binding normative criterion to state explicitly that bribes to foreign public officials are not deductible for any tax purposes. The criterion is entitled "Bribes to public officials. They are not deductible for the effects of income tax".

16. This document was disseminated among high ranking public officials through official letter No, 600-04-02-2012-57567. It has also been publicized at the SAT's website according to article 33 of the Federal Fiscal Code (FFC) and Rule Number 1.2.14.3 of the Miscellaneous Fiscal Resolution 2012 in the following link: [http://www.sat.gob.mx/sitio\\_internet/informacion\\_fiscal/legislacion/criterios\\_normativos/default.asp](http://www.sat.gob.mx/sitio_internet/informacion_fiscal/legislacion/criterios_normativos/default.asp)
17. In addition, this criterion has been publicized to the 35,000 public officials of this institution through Intramat, in the Legal Regulations System (Sistema Unico de Normatividad SUN, in Spanish), a system that integrates fiscal legislation for its strict observance. <http://192.168.220.192/sun>. Moreover, the General Evaluation Administration sent an official letter to its staff on August 7 to disseminate this criterion, since this office is responsible for the implementation of OCDE's recommendations. The aforementioned document is available as well on the following anticorruption conventions site: [http://www.sat.gob.mx/sitio\\_internet/transparencia/anticorrupcion/112\\_18607.html](http://www.sat.gob.mx/sitio_internet/transparencia/anticorrupcion/112_18607.html)
18. In coordination with the Ministry of Foreign Affairs, the criterion was translated into English to be disseminated at the international level through diplomatic representations among Mexican companies and chambers of commerce present in other countries.
19. With respect to continuing with the training courses for tax examiners, from June 25 to August 3, this institution transmitted a videoconference on the "Detection of national and foreign bribery" through the institutional Aprende virtual system to 2,212 public officials, focusing on the strategies to detect bribery and on the duty to report suspicions of bribery to the law enforcement authorities. This course is in the process of being institutionalized.
20. Regarding the recommendation of maintaining a data base of bribery and related accounting offenses, SAT operates the Jupiter system, which registers and integrates all the cases at issue in which this agency is a party, among them investigations of natural and legal persons for the offences of domestic bribery, foreign bribery and false accounting. Accordingly, SAT updates the data base related to investigations of the abovementioned offences and, if lawful and fitting, it formulates the corresponding complaint to the competent authority.
21. In regard to the recommendation related to the improvement of the Strategies to Detect National and International Bribery, the General Administration of Federal Fiscal Auditing (AGAFF) is identifying the facts to focus on and the best techniques to use during audits to detect bribery. To do so, audit and research processes are being re-examined, which will enable to establish detection indicators. Special attention is given to these red flags:



- Fictitious expenses or deductions
- Fictitious employees
- Taxpayer's behaviours
- Concealment methods
- Books and registers
- Requirements to report certain foreign retentions and payments

In order to improve bribery detection on certain vulnerable sectors, persons and conducts, SAT is integrating the efforts of its different areas on an institution-wide program.

22. SAT updated its website of anti-corruption conventions with relevant information about the Phase 3 evaluation of the OECD Anti-Bribery Convention in order to inform taxpayers and society.
23. SAT attended the plenary meeting of the Working Group on Bribery, held on October 2012, to present an oral follow-up report of the phase 3 evaluation of Mexico on the implementation of the OECD Anti-bribery Convention, stressing the approval and publication of the criterion that makes explicit that bribes to foreign public officials cannot be deductible for tax purposes.
24. This institution published a banner on its intranet stating its efforts to combat bribery in cooperation with international organizations, among them with OECD. This site is available to more than 30,000 employees at SAT.
25. SAT has continued implementing the phase 3 recommendations; in particular, those related to ongoing training in bribery detection for tax examiners and the revision of the Strategies to detect national and international bribery.

On the other hand, as part of the awareness actions that the Mexican Government has propelled with the private sector, it has been agreed between the Ministry of Economy (through ProMexico's office) and the Ministry of Public Administration, to include a specific module about the Anticorruption Conventions as part of the courses that ProMexico has already scheduled with the private sector.

In this context, the Anticorruption Convention module has been already given in the following courses (and will be also teach in other courses scheduled during 2011 and 2012):

- Training in logistic and international transportation (Date: September 24<sup>th</sup>, 2011)
- New schemes of commercialization and differentiation: International Commerce, Strategic Alliances and Exportation Consortium. (Date: September 29<sup>th</sup>, 2011)

In this same logic, the Mexican Government participated on the Seminar "Corporate and Professional Integrity" on September 2<sup>nd</sup>, 2011. The Seminar was organized by the Panamerican University and the International Bar Association, with the objective of creating awareness about the importance of integrity in the private sector in the framework of the Anti-Bribery Convention.

Mexico's Government also participated on the 9th International Congress of Social Responsibility that COMPITE - an organization that guides and gives training to small and medium enterprises- organized

on September 27<sup>th</sup>, 2011. On this occasion, Mexico's international anticorruption commitments were explained, including the Anti-Bribery Convention and its implications.

Mexico's has joined the Open Government Partnership (OGP), a global effort to make governments more transparent, effective and accountable by promoting transparency, empowering citizens, and fighting corruption.

### ***Foreign bribery cases***

As reported in the Third Phase Evaluation, Mexico has opened its first two foreign bribery investigations, both investigation are on-going.

### ***Other information***

#### *Relevant authorities*

The body responsible of coordinating the prevention and enforcement actions of the federal anticorruption strategy is the Interministerial Commission Against Corruption (Comisión Intersecretarial para la Transparencia y el Combate a la Corrupción en la Administración Pública Federal).

[www.programanticorruption.gob.mx](http://www.programanticorruption.gob.mx)

The authority responsible of promoting preventive measures within the Federal Public Administration (Integrity, audit, internal control, appropriate systems of procurement and transparency) is the Ministry of Public Administration (Secretaría de la Función Pública. Acronym in Spanish SFP)

Unidad de Políticas de Transparencia y Cooperación Internacional  
Miguel Laurent 235, 1er Piso  
Col. Del Valle Benito Juárez  
C.P. 03100 México, D.F.  
Tel: +52.55.2000.3000

<http://www.funcionpublica.gob.mx>

The authority responsible for investigating and prosecuting criminal offences is the Attorney-General's Office.

(Procuraduría General de la República. Acronym in Spanish language is PGR)  
Av. Paseo de la Reforma 211-213  
Col. Cuauhtémoc, Delegación Cuauhtémoc  
C.P. 06500, México D.F.

<http://www.pgr.gob.mx/>

The Ministry of Finance

(Secretaría de Hacienda y Crédito Público. Acronym in Spanish language is SHCP)  
Palacio Nacional S/N  
1° Patio Mariano, 3° Piso  
Col. Centro, Delegación Cuauhtémoc  
C.P. 06010, México D.F.

<http://www.shcp.gob.mx>

The Ministry of Economy

Unidad de Prácticas Comerciales Internacionales  
(Secretaría de Economía. Acronym in Spanish language is SE)  
Av. Insurgentes 1940  
Col. Florida C.P. 01030  
México D.F.

<http://www.se.gob.mx>

The Tax Administration Service

(Servicio de Administración Tributaria. Acronym in Spanish SAT)  
Av. Hidalgo 77  
Col. Guerrero, C.P. 06300  
México D.F.

<http://www.sat.gob.mx>

The Ministry of Foreign Affairs

(Secretaría de Relaciones Exteriores. Acronym in Spanish SRE)  
Plaza Juárez 20  
Col. Centro, Delegación Cuauhtémoc  
CP. 06010, México D.F.

<http://www.sre.gob.mx>

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation. (February 2000)

<http://www.oecd.org/dataoecd/15/30/2388858.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions. (September 2004)

<http://www.oecd.org/dataoecd/53/31/33746033.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (April 2007)

<http://www.oecd.org/dataoecd/39/39/38376307.pdf>

Phase 3: Report on the Implementation and Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation on Further Combating Bribery (October 2011)

<http://www.oecd.org/dataoecd/60/7/48897634.pdf>

## NETHERLANDS

*(Information as of 28 November 2012)*

### ***Introduction***

In the overview presented in this document, the Netherlands presents current legal measures to endorse and implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions. The overview provides information on: corruption legislation, the liability of intermediaries and legal persons as well as sanctions which can be imposed, reference and details on the Public Prosecutor Instruction on the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad, the Public Prosecutor Instruction on the Deprivation of Criminal Assets and the Public Prosecutor Instruction on High Fixed Penalties and Special Fixed Penalties.

The overview also provides information on: small facilitation payments, the confiscation of the bribe and the proceeds of bribery, the statute of limitations regarding the bribery offence, the framework to fight money laundering, accounting and external audit requirements, tax measures for combating bribery, reporting requirements in view of suspected acts of foreign bribery (Public Sector), the available whistle-blowing and whistleblower protection framework and measures in the field of public procurement. Considering the aim of this document, the overview does not, for example, contain information on preventive measures such as codes of conduct, awareness raising initiatives, measures to stimulate due diligence, non-legal frameworks on financial government schemes to assist business development, information on resources, initiatives in practice regarding the investigation and prosecution of bribery of foreign public officials. Information on steps undertaken in these and other fields which are not mentioned in this overview can be found in the evaluation and follow-up reports of the OECD Workings Group on Bribery (see below the links). Moreover the overview is a snapshot of the measures in the Netherlands which are continuously developing.

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of ratification was deposited with the Secretary-General of the OECD on 12 January 2001.

### ***Implementing legislation***

The law on the revision of the corruption legislation was published in the Official Gazette on 28 December 2000 (Staatsblad 2000 nr. 616) and entered into force on 1 February 2001.

### ***Brief description:***

Currently, the Dutch foreign bribery offence is contained in several articles of the Dutch Criminal Code:

Article 177(1) covers foreign bribery where the purpose of the bribe is to obtain a breach of the foreign public official's duties. The maximum sanctions for a natural person are 4 years imprisonment, and a EUR 78 000 fine (5th category fine);

Article 177a covers foreign bribery where the purpose of the bribe is not to obtain a breach of the foreign public official's duties. The maximum sanctions for a natural person are 2 years imprisonment, and a EUR 78 000 fine (5th category fine);

Article 178(1) covers foreign bribery where the purpose of the bribe is to influence a judge's decisions. The maximum sanctions for a natural person are 6 years imprisonment, and a EUR 78 000 fine (5th category fine); and

Article 178(2) covers foreign bribery where the purpose of the bribe is to obtain a conviction in a criminal case. The maximum sanctions for a natural person are 9 years imprisonment, and a EUR 78 000 fine (5th category fine).

Since 1 April 2010 (Stb. 2009, 525) new legislation has also provided for the possibility of imposing a professional disqualification in the event of active bribery of public officials. See the changed Articles 177, par. 3, 177a, par. 3, and 178, par. 3, of the Penal Code (further explained in Kamerstukken II 2007/08, 31 391, nr. 3, p. 10).

### ***Liability of legal persons and sanctions***

The criminal liability of legal persons in the Netherlands is set out in Article 51 of the Penal Code. A decision of 21 October 2003 by the Supreme Court broadened the possibility to trigger liability of legal persons by providing for an autonomous liability of legal persons (Hoge Raad 21 October 2003, NJ 2006, 328). According to the Hoge Raad, determining criterion for the attribution of a criminal offence to the legal person is the question whether the conduct took place or was carried out in the spirit of the legal entity. Thus, there is a jurisprudential shift of focus from a legal fiction involving a natural person, to a concept which focuses on the act committed. The decision also states that "standards for attributing conduct by a natural person to a legal entity" can also be used to trigger the liability of the legal person, but this is no longer a prerequisite. The 2003 Supreme Court decision also established corporate liability for a criminal offence committed by a company's employee(s), if the company could "determine" the act and "accepted it." In other words, a legal person can be held liable if it did not prevent the act even though it was in its power to do so.

Article 51, par. 2, of the Penal Code specifies that criminal proceedings may be instituted simultaneously or separately against legal and natural persons, and that penalties may be imposed on either or both the legal and natural person. Thus, the prosecuting authorities retain discretion on whether or not to institute criminal proceedings against a legal person, and the courts retain discretion on whether or not to impose sanctions on the legal person.

For legal persons, fines may be increased to the amount of the next category as the one provided for natural persons. For foreign bribery, legal persons may therefore incur a 6th category fine. As a result, the maximum level of financial sanctions for legal persons is ten times the fine applicable to natural persons, i.e. EUR 780 000. It is worth noting that article 57(2) of the Criminal Code allows for the cumulating of fines if several offences have occurred; for instance, where a foreign bribery offence also constituted a false accounting and a money laundering offence, sanctions could, at least in theory, reach three times a 6th category fine or a maximum of EUR 2.34 million (since false accounting and money laundering also incur 6th category fines). Similarly, the commission of multiple bribery offences may lead to as many fines. In addition proceeds of crime can be confiscated (see below).

### ***Liability for bribery through intermediaries***

The Dutch foreign bribery offence does not expressly cover bribes made through intermediaries. However the offence is intended to be interpreted in a broad functional sense and cover such *modus*

*operandi*. This position is also supported by Supreme Court authority. The *Instruction on the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad* also expressly refers to the criminalisation of bribery through the use of intermediaries, including local agents, representatives and consultants.

### ***Sanctions in out-of-court settlements***

The process of out-of-court settlements is governed by article 74 of the Criminal Code and essentially involves the payment of a sum of money by the defendant to the State in order to avoid criminal proceedings (the so-called “transaction”). It can also involve the renunciation of title to or surrender of objects that have been seized and are subject to forfeiture and confiscation, or payment of their assessed value. Moreover, it can involve the payment of the estimated proceeds acquired from the criminal offence, as well as compensation for any damage caused. Pursuant to article 74, par. 1, of the Penal Code, it is available in relation to “serious offences” excluding those for which the penalty of imprisonment is more than 6 years. The right to prosecute lapses once the conditions set in a particular case have been met.

The Public Prosecutor Instruction on High Fixed Penalties and Special Fixed Penalties contains rules for out-of-court settlements involving high amounts of money. This Instruction states that if the public prosecutor decides to settle a case with a high or special transaction, in principle a press release is mandatory. The Instruction also states that large or special transactions are often applied in cases which caused public concern. Basically, in these cases the rule is: no out-of-court settlement (but instead submittal to the court), unless there is a very good reason for it. If the public prosecutor chooses for an out-of-court settlement in such a case, the proposed transaction (with motivation) has to be submitted by the Board of Procurators General to the Minister of Security and Justice. This gives the Minister of Security and Justice the opportunity to determine whether he is prepared to be political responsible for the settlement. Pursuant to articles 127 – 129 of the Law on the Judiciary the Minister of Security and Justice can submit the case to the court.

It is possible to settle articles 177 (bribery of a public servant where there is a breach of duty), 177a (bribery of a public servant where there is no breach of duty) and 178 (1) (bribery of a judge with the object of exercising influence on a decision) of the Penal Code with a transaction, this possibility does not apply to article 178 (2) (bribery of a judge with the object of obtaining a conviction in a criminal case) of the Penal Code.

### ***The new Public Prosecutor Settlement Act***

On 1 February 2008, the new Public Prosecutor Settlement Act (Wet OM-Afdoening) came into force. This law ensures that the transaction (Article 74 Penal Code) will be gradually replaced by a new instrument: a penalty imposed by the public prosecutor (OM-straftbeschikking). This penalty imposed by the public prosecutor involves an act of prosecution, which means that, among other things, the payment of a possible fine can be enforced. A transaction, on the other hand, is an out-of-court settlement to avoid criminal prosecution and thereby has no means for enforcing payment (if someone does not meet the requirements of the transaction, the case will be brought before court instead). It is possible to attach certain conditions to the penalty imposed by the public prosecutor, for example: the confiscation of assets, compensation for victims and certain behaviour changing measures (also for legal persons).

This Public Prosecutor Settlement Act is gradually being implemented. At this point, it is not possible to impose a penalty by the public prosecutor in case of bribery of a (foreign) official. However, in the future this will be possible.

### ***Instruction on the Investigation and Prosecution of Corruption Offences in Public Office Committed Abroad<sup>8</sup>***

This Instruction further specifies the scope of the penalization in relation to the jurisdiction of the Dutch courts and the factors that must be taken into account in assessing the expediency of prosecuting individual cases of foreign corruption in public office. It goes without saying that the factors are also relevant to the assessment of the expedience of any investigations preceding prosecution. In addition, these instructions describe the decision-making process for the selection procedure of the cases. The instruction relates to both the bribing party (civilians and companies) and the bribed party (civil servants) in corruption offences committed abroad. The investigation and prosecution of corruption committed in the Netherlands is addressed in the Instructions on the Investigation and Prosecution of Corruption Offences in Public Office Committed in the Netherlands.

### ***Statute of limitations***

Article 70 of the Penal Code contains the rules prescribing the statute of limitations. The statute of limitations for offences committed under article 177 (breach of duty) and 178 (bribes to judges) is 12 years, and for offences committed under article 177a (no breach of duty) it is 6 years. Pursuant to article 71.1 of the Penal Code, the period of limitation begins to run on the day following the day on which the act in question was committed. Pursuant to article 72.1 of the Penal Code, “any act of prosecution terminates” the running of the period, whether the defendant has knowledge of that act against him/her or not. Under article 72, par. 2, of the Penal Code, when a period of limitation terminates, a new one commences. Moreover, article 73 of the Penal Code states that suspension of a prosecution for the purpose of resolving a preliminary issue “tolls” (suspends temporarily) the limitations period.

### ***Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations***

### ***Instruction on the Deprivation of Criminal Assets<sup>9</sup>***

This Instruction provides for the procedures concerning the (international) deprivation of unlawfully obtained profits or advantages. Unlawfully obtained profits or advantages shall be understood to mean the increase in value of the wealth of the individual involved as a result of an offence. This includes the fruits obtained as a result of this increase of wealth (consequential profit). Further, the unlawfully obtained profits or advantages may also relate to the value with which the wealth has not decreased as a result of expenses saved on. The profits or advantages may be calculated per offence (on a transaction basis) or over a period of time (overview of income/comparative analysis of a convict’s assets over time).

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<sup>8</sup> Category: Investigation, Prosecution; Legal Nature: Instruction within the meaning of article 130, paragraph 4 Judiciary (Organisation) Act; Sender: Board of Procurators General; Addressees: Heads of Public Prosecutor’s Offices, Director of the National Police Internal Investigations Department; Registration Number: 2011A015; Established: 11-07-2011; Date of entry into force 01-08-2011; Term of validity 31-07-2015.

<sup>9</sup> Category: Investigation, prosecution, enforcement, criminal procedure; Sender: Board of Procurators General; Addressees: Heads of Public Prosecutor’s Offices, Director Prosecution Service Criminal Assets Deprivation Bureau; Legal nature Instruction within the meaning of article 130, paragraph 4 Judiciary (Organisation) Act; Registration number 2009A003; Established 16-02-2009; Date of entry into force 01-03-2009; Term of validity 28-02-2013



### ***Instruction on High Fixed Penalties and Special Fixed Penalties<sup>10</sup>***

This Instruction provides a framework for the offering of high fixed penalties and fixed penalties in special cases, and the procedure to be followed when offering such penalties. The terms 'high fixed penalty' and 'special fixed penalty' have been defined in more detail, and the starting points for offering such fixed penalties have also been indicated. In principle, a press release is necessary if a decision has been made to impose a high or special fixed penalty. The Instruction provides rules pertaining to the information that may be disclosed in a press release. The Instruction further deals with the procedure that has to be followed if a high fixed penalty or special fixed penalty is to be imposed. High fixed penalties and special fixed penalties are registered separately at the National Office of the Public Prosecution Service. And finally, the Instruction contains a separate procedure for fixed penalties between € 2,500 and € 50,000, and fixed penalties in sensitive cases.

### ***Small facilitation payments***

In view of article 177 and 177a of the Dutch Penal Code it is not relevant which motive induced bribing a public official. Therefore facilitation payments constitute – strictly speaking – a criminal offence under the Dutch Penal Code. However, it is possible that these payments will not be prosecuted in the Netherlands. The current Instruction on the Investigation and Prosecution of Corruption of Foreign Officials is created with more specific premises on the issue of facilitating payments; this gives law enforcement bodies, embassies and international business firms in the Netherlands more clarity on how to act. The Instruction clarifies the approach of the Public Prosecutor's Office to small facilitation payments: these payments will not be prosecuted, assuming they meet certain factors listed in the Instruction. Public Prosecutor's Office deems it not expedient to pursue a stricter investigation and prosecution policy on tackling bribery of foreign public servants than the policy required under the OECD Convention. Certain factors which are relevant in determining if the Public Prosecutors' Office can consider taking the decision to not prosecute are:

- It concerns acts or omissions which the public servant in question was already obliged to perform by law. The payment may not interfere with competition in any way whatsoever.
- It concerns, in absolute or relative sense, small amounts
- It concerns payments to junior public servants
- The gift must be entered in the company's records in a transparent way, and must not be concealed.
- The initiative for such a payment comes from the public official.

### ***Confiscation of the bribe and the proceeds of bribery***

The legal framework applicable to the confiscation of criminal proceeds distinguishes ordinary confiscation and special confiscation.

Confiscation (*Verbeurdverklaring*) (articles 33, 33a of the Penal Code) applies to property obtained, in whole or part, by means of an offence or from the proceeds of an offence; property in relation to which the offence was committed; property used to commit or prepare for the offence; property intended for the

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<sup>10</sup> Category: Investigation, prosecution, enforcement, criminal procedure; Sender: Board of Procurators General; Addressees Heads of Public Prosecutor's Offices, Director Prosecution Service Criminal Assets Deprivation Bureau; Legal nature Instruction within the meaning of article 130, paragraph 4 Judiciary (Organisation) Act; Registration number 2008A021; Established 13-10-2008; Date of entry into force 01-11-2008; Term of validity 30-04-2013.

commission of an offence. Confiscation is a penalty based on a criminal conviction. Special confiscation (*Ontneming*) (article 36e of the Penal Code) consists of the imposition of an obligation on the person convicted of an offence to pay the state a sum in restitution of illicit earnings (article 36e, par. 1, of the Penal Code). In addition to special confiscation for offences for which the accused is convicted, assets may also be confiscated for similar offences or offences for which there is a fine of at least € 45.000, for which it has become plausible to assume that they were also committed by the accused (article 36e, par. 2, of the Penal Code). Assets may also be confiscated on conviction for an offence for which there is a potential fine of at least € 45.000, if the criminal financial investigation reveals a plausible case for other criminal activity from which the accused may have obtained illicit earnings (article 36e, par. 3, of the Penal Code).

Except for simple cases where proceeds are easily confiscated under articles 33 and 33a of the Penal Code as part of the criminal sentence, special confiscation occurs in a separate proceeding that takes place after the criminal conviction has been obtained. The proceedings can be initiated within two years following a conviction, permitting time for a thorough investigation relating to the criminal proceeds, amounts and sources. But often these investigations run already parallel to the main criminal investigation. Under Dutch law confiscation in general is discretionary. It is up to the court to decide whether to apply confiscation or special confiscation, and up to the Public Prosecutor's Office to decide whether to initiate confiscation proceedings. However, an Instruction of the Public Prosecutor's Office (*Aanwijzing Ontneming*) urges all prosecutors to initiate special confiscation proceedings when the criminal proceeds are estimated at least € 500,-. In 2009 the National Public Prosecutor's Office issued a renewed guideline that provides arrangements for (international) confiscation. In the guideline a policy is stated outlining in detail the approach to confiscation.

On 1 July 2011, a new revision of the provisions on special confiscation entered into force (Act of 31 March 2011, Stb. 2011, 171). This new legislation further enlarges the possibilities for confiscating criminal proceeds. The legislation provides for:

1. an expansion of the so called "ordinary confiscation" (*verbeurdverklaring*);
2. the introduction of legal presumptive evidence regarding the origin of assets belonging to the defendant (also referred to as a shift of the burden of proof);
3. an extension of the so-called "third-party precautionary seizure" (*anderbeslag*);
4. the introduction of a frame for financial investigation pending the decision of the Court of Appeal or the Supreme Court in special confiscation proceedings;
5. the introduction of a framework for financial investigation after the confiscation order has become final (wire tapping etc. in order to discover hidden property).

The new law is designed to expand the possibilities for financial investigation into the criminal proceeds order to further enhance subsequent confiscation. An important element in this legislation, concerns the proof of the legitimate origin of proceeds. The legislation provides in statutory presumptions of evidence regarding the origin of assets, belonging to the defendant. These presumptions may concern assets acquired over a period of up to six years prior to the criminal offence. The presumptions can be refuted by the defendant, on the balance of probabilities. The law significantly increases the powers of law enforcement agencies and the Public Prosecutor's Office in tackling lucrative (organised) crime.

Interim measures aimed at the freezing and seizure of proceeds of crime are provided for in articles 94 and 94a of the Code of Criminal Procedure. Both a criminal investigation (article 94 of the Code of Criminal Procedure) and provisional measures in order to ensure the execution of a future –value based– confiscation order or payment of a fine (article 94a of the Code of Criminal Procedure), can serve as

grounds for seizure. Under article 94a, par. 3 and 4, of the Code of Criminal Procedure, seizure of proceeds also covers goods belonging to third persons where the third party knew or should reasonably have suspected that the goods represent the proceeds of crime. Such persons may also be ordered to pay an amount of money equivalent to the proceeds held. Gifts are subject to these provisions and may also be addressed through a civil revocatory action. Article 94a, par. 3 and 4, applies to both natural and legal persons, and accordingly assets transferred to legal entities are covered as long as there is a demonstration of knowledge on the part of the legal entity.

### ***Money laundering***

The Dutch money laundering offences are placed in articles 420bis, ter and quater of the Criminal Code. Articles 420bis: 1. Anyone who: a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, knowing that the object derives directly or indirectly from any offence; b. acquires, has in his possession, transfers or converts, or makes use of an object knowing that the object derives directly or indirectly from any offence shall be guilty of money laundering and liable to a term of imprisonment not exceeding four years or a fifth-category fine. 2. An object shall be understood to be any good or property right.

Article 420ter: Anyone who makes a habit of money laundering shall be liable to a term of imprisonment not exceeding six years or a fifth-category fine. Article 420quater 1: Anyone who: a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, while he might reasonably have suspected that the object derives directly or indirectly from any offence; b. acquires, has in his possession, transfers, converts or makes use of an object, while he might reasonably have suspected that the object derives directly or indirectly from any offence shall be guilty of negligent money laundering and liable to a term of imprisonment not exceeding one year or a fifth-category fine. 2. An object shall be understood to be any good or property right

Under these provisions, any criminal offence (including foreign bribery) is a predicate offence to money laundering. According to a 2004 Supreme Court decision, a proven link to the predicate offence is not necessary, and it would be sufficient for the prosecution to establish that the defendant knew or should have known that the goods/monies derive from criminal asset.<sup>11</sup> Money laundering is sanctioned by one to six years imprisonment and a fifth category fine.

### ***Accounting requirements, external audit***

Falsifying accounts is punishable under Title XII of the Penal Code (articles 225 – 227): ‘forgery, giving false information and breach of the obligation to provide information’. Accounting fraud in the context of bankruptcy is punishable under Title XXVI of the Penal Code (articles 341 and 344): ‘disadvantaging creditors or beneficiaries’. Disclosing misleading statements is punishable under article 336 of the Penal Code.

The establishment of off-the-book accounts, the making of off-the-book or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object and the use of false documents, prohibited under Article 8 of the Convention, would also be contrary to the requirements under articles 361, 362, et seq. of Book 2 of the Civil Code. Articles 361, 362 et seq. of Book 2 of the Civil Code, which are based on relevant EU Directives, require all companies: to

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<sup>11</sup> LJN: AP2124, *Hoge Raad*, 02679/03, 28 September 2004, and [Phase 2 Report on the Netherlands](#) at paragraph 250.

prepare annual accounts, which are to include a balance sheet, profit & loss account and notes on accounts; to draw up the profit and loss account in a manner as to allow a reasonable judgement with regard to the pattern of income and expenditure of the company; and not to adopt annual accounts before an independent accountant has issued a statement regarding the credibility of the annual account.

The penalty imposed on natural persons is imprisonment not exceeding six years or a 5<sup>th</sup> category fine (EUR 78 000). For legal persons, fines may be increased to the 6<sup>th</sup> category, resulting in ten times the fine applicable to natural persons (i.e. EUR 780 000). The Audit Firms Supervision Act (2006) contains the general rules on supervision of the sector. The Act strengthens provisions dealing with auditor independence, and also includes new supervision arrangements, and provisions for reporting of suspected offences by auditors (either to company management or where necessary, law enforcement authorities). More detailed rules are included in the Decree on the supervision of audit firms, mainly derived from the requirements included in the International Standard of Quality Control 1 (ISQC1). Both the Act and the Decree are based on the European Statutory Audit Directive (2006/43/EC).

In 2010 the Netherlands has adopted the Clarified International Standards on Accounting (ISAs) through national regulation which is referred to as the 'NV COS' (*Nadere Voorschriften Controle- en overige Standaarden*). The NV COS consists of regulation developed in cooperation between the two Netherlands bodies of professional accountants: the 'Koninklijk Instituut van Registeraccountants' - 'Royal NIVRA' and the 'Nederlandse Orde van Accountants-Administratieconsulenten' - 'NOvAA'. Based on the powers granted to these professional bodies by law, regulations of these bodies are binding and can be enforced by the disciplinary court. Although foreign bribery is not explicitly covered in the ISAs, there are specific standards on the auditor's responsibilities relating to fraud in an audit of financial statements (ISA 240) and on compliance with laws and regulations in an audit of financial statements (ISA 250). Those standards cover foreign bribery in general and refer auditors to their obligation to report suspicious transaction to authorities based on anti-money laundering laws and to report fraud, under certain conditions, to the police. In addition, the ISAs require auditors to report (suspected) fraud and illegal acts to management and where relevant to those charged with governance. Relevant situations include (suspected) material fraud and fraud committed by management. Auditors who inform the relevant authorities of suspected fraud are not liable for any damage third parties might occur unless it is proven that the auditor in all fairness should have reported the (suspected) fraud to the relevant authorities.

### ***Tax measures for combating bribery***

The Netherlands enacted legislation in 2006 to expressly prohibit the tax deductibility of bribes. This legislation amended all three laws regulating the non-tax deductibility of expenses related to crimes, namely the Law of Income Tax 2001, the Law on Wage Tax 1964, and the Law on Corporate Tax 1969. These provisions removed the requirement for a conviction in order to deny the tax deductibility of expenses. It enables tax officials to disallow deductions straight away, provided that it can be established that the expenses claimed relate to a bribe. An important further safeguard is that Dutch taxation system requires taxpayers to substantiate legitimate business expenditures. Jurisprudence has imposed a heavy burden of proof on individual taxpayers in order for deductions to be acceptable. In that regard, expenses must be shown by the taxpayer to have been incurred in the ordinary course of the taxpayer's business or trade. Small facilitation payments are not tax deductible under Dutch law. There is a zero tolerance policy concerning the tax deductibility of facilitation payments, with the consequence that every bribe has to be reported to the public prosecutor. It is standard Dutch policy to try to include a specific paragraph in MOUs with other countries for the spontaneously exchange of information about bribes. Many MOUs contain such a paragraph. The language mentioned under paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention is included in a number of legal instruments, such as the Netherlands Swiss bilateral tax treaty. It is also included the Convention on Mutual Administrative Assistance in Tax Matters (article 22, par 4), as ratified by the Kingdom of the Netherlands.

### ***Reporting suspected acts of foreign bribery (public sector)***

All public servants and all public boards (boards instituted by or on behalf of the legislator and engaged in serving the public interest) are obliged to report serious offences committed by a public servant, including corruption, that they come across in the course of their duties to the Public Prosecutor under article 162 of the Code of Criminal Procedure. A large number of legal entities and their bodies whose duties and powers are defined by law have the same obligation. This usually concerns semi-public agencies entrusted with the implementation of a statutory scheme, such as for instance bodies granting benefits under the Social Security legislation. The term ‘public servant’ is defined in article 84 of the Penal Code, pursuant to which it also applies to “all persons elected to public office in elections duly called under the law” (84.1), “arbitrators” (84.2) and “all personnel of the armed forces” (84.3). In addition, it is stated in the notes on the Implementation Bill that the term “official” has been broadly interpreted in the jurisprudence, and includes persons who are appointed to a public function by public authorities in order to perform part of the duties of the State or its bodies. The notes on the Implementation Bill clarify that “official” includes those who are elected as Members of Parliament and members of municipal councils. Furthermore the Supreme Court has defined a “public servant” as “one who under the supervision and responsibility of the authorities has been appointed to a function of which the public character cannot be denied with a view to implementing tasks of the state and its organs.” There are no sanctions for non-compliance with this obligation, which is liable to prosecution. Failing to report can be construed as a neglect of duty, for which disciplinary measures can be imposed.

### ***Whistleblowing and whistleblower protection***

In 2010 a new Whistleblower Regulation for Central Government and Police entered into force (Bulletin of Acts and Decrees 2009, 572). In line with this new regulation for Central Government and Police similar whistleblower provisions have been established for the ministry of Defence including all (external) divisions within its responsibility, and for the government authorities at provincial and municipal level. These (re)new(ed) whistleblower regulations contain several improvements. The improvements with regard to the protection of public official whistleblowers are:

In addition to the already existing legal protection of whistleblowers the renewed regulation contains an explicit obligation for the competent authority to protect the whistleblower when (s)he is a victim of actual harassment, mobbing, intimidation or aggression by colleagues. ‘Good employership’ involves that the competent authority offers the intimidated whistleblower de facto protection under those circumstances. The opportunity to report to a Confidential integrity counsellor a misconduct or a breach of ethical standard which can cause major damage to the public service.

An obligation for all officials within the organisation who are involved in handling an open report of a misconduct or a breach of ethical standard to protect the identity of the whistleblower (from being identified by other people in- or outside the organisation). A financial compensation (in advance) for part of the costs of judicial procedures when the whistleblower – in spite of a ban on prejudice – is dismissed or otherwise is infringed on his rights, will challenge the decision with professional judicial assistance (‘equality of arms’). A financial compensation (afterwards) for actual and in reasonableness payable legal costs with regard to professional judicial assistance by a third party when the adverse decision is revoked by the competent authority in a complaint procedure or when the decision is set aside by an administrative judge. The latter compensation is limited ( € 5.000,-) and from this compensation the advance must be deducted.

As of 1 October 2012, a newly established ‘National independent Advice and information point/centre for whistleblowing’ (the *Commissie Advies- en verwijspunt klokkenluiden* - CAVK) has started its activities (Bulletin of Acts and Decrees 2011, 427). This centre will act as a point of support for (potential)

whistleblowers in both the public and the private sector that have questions concerning whistleblowing. Mainly potential whistleblowers who observed a possible misconduct in the organisation and are not sure how to handle this information can contact the centre. The identity of the potential whistleblower will be protected (confidentiality). The CAVK only advises and refers whistleblowers to the competent authority, and has no task or competence to examine, inspect or investigate cases. The CAVK creates a 'safe haven' for potential whistleblowers to get independent advice. The CAVK will be evaluated after 2 years' operation, after which there may be more formal legislation on whistleblowing.

It should furthermore be noted that the legal position of employees that report misconduct such as bribery of foreign officials to management or to government authorities is protected through Dutch labour laws and the Civil Code. Dismissal in the case of whistleblowing provides for a civil cause of action, so that a judge can decide on the reasonableness of the dismissal. In case of unreasonable dismissal, the employee can be entitled to financial compensation.

Within the private sector there is ongoing work with regard to the Dutch code for corporate governance for publicly listed companies, for which a specialised committee was established in July 2009 – the Corporate Governance Monitoring Committee. The principles of the Dutch CG code, which uses inter alia the OECD Principles on Corporate Governance as a basis, that deals with the role and duties of the management board recommends as a best practices that: "The management board shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature within the company to the chairman of the management board or to an official designated by him, without jeopardising their legal position."

### ***Public procurement***

In re-implementing EC Directives 2004/17/EC and 2004/18/EC, the Netherlands established under Article 2.86 of the Public Procurement Act the mandatory exclusion of tenderers convicted of corruption and financial crime offences, including foreign bribery. Under Article 2.88 of the Act, a contracting authority may choose not to apply mandatory exclusion for "compelling public-interest reasons; or if, in the contracting authority's judgment, the contractor or tenderer has taken adequate measures to restore the betrayed confidence; or if, in the contracting authority's judgment, exclusion is not a proportional sanctions, in light of the time which has passed since the conviction and given the subject matter of the contract." Both articles are directly implemented from the EC Directives.

### ***Other information***

#### *Relevant authorities*

Dutch National Police Internal Investigation Department (Rijksrecherche; email: info@rijksrecherche.nl, Tel: 31.70.3411100)

Public Prosecutor's Office in Rotterdam (Tel: 31.10.4966816)

Telephone number for anonymous denouncements: 0800-7000

#### Relevant Internet links to national implementing legislation

<http://www.oecd.org/dataoecd/40/59/2739921.pdf> (Staatsblad 2000, nr. 616)

<http://www.openbaarministerie.nl/beleidsregels/docs/2002a009.htm> (Aanwijzing opsporing en vervolging ambtelijke corruptie)

### *Signature/Ratification of other relevant international instruments*

#### Ratification:

- The EU Convention on the Protection of the European Communities' Financial Interests (PIF-Convention) and its first and second Protocol
- The EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States
- The EU Council Framework Decision against Corruption in the Private Sector
- The Criminal Law Convention on Corruption of the Council of Europe
- The United Nations Convention against Transnational Organised Crime
- The Protocol to the Criminal Law Convention on Corruption of the Council of Europe
- The United Nations Convention against Corruption, acts of ratification sent to UN secretariat in October 2006.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (February 2001)

<http://www.oecd.org/dataoecd/39/43/2020264.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (June 2006)

<http://www.oecd.org/dataoecd/14/49/36993012.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (December 2008)

<http://www.oecd.org/dataoecd/61/59/41919004.pdf>

## **NEW ZEALAND**

*(Information as of September 2010)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of ratification was deposited with the Secretary-General of the OECD on 25 June 2001.

### ***Implementing legislation***

The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001.

The Act came into force on 3 May 2001 and the provisions relating to offence of foreign bribery are set out in sections 105C, 105D and 105E of the Crimes Act 1961.

Key features of the legislation include:

- An offence of bribing foreign public officials carrying a maximum penalty of up to 7 years imprisonment – this made it an offence, with narrow exceptions to corruptly give, or agree to give a foreign public official with the intent of influencing them in respect of their official capacity in order to obtain or retain business or obtain an improper advantage in business;
- Application of extraterritorial jurisdiction to Convention offences enabling prosecutions to be brought for foreign bribery offences committed outside New Zealand by New Zealand citizens, residents, and body corporates or corporations sole incorporated in New Zealand;
- Limited exceptions to the foreign bribery offence where acts alleged to constitute the offence are:
  - In the form of small facilitation payments, or
  - Carried out in another country where the act was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the FPO is employed or otherwise provides services is situated.

New Zealand is currently reviewing aspects of its implementing legislation in line with recommendations made in the course of the Phase 2 Evaluation.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- Income Tax Act 2007
- Extradition Act 1999
- Mutual Assistance in Criminal Matters Act 1992
- State Sector Act 1988
- Public Audit Act 2001



- Proceeds of Crime Act 1991
- Criminal Proceeds (Recovery) Act 2009
- Protected Disclosures Act 2000
- Financial Transactions Reporting Act 1996
- Anti-Money Laundering and Countering Financing of Terrorism Act 2009
- Sentencing Act 2002
- Secret Commissions Act 1910

This legislation can be accessed on line at [www.pco.parliament.govt.nz](http://www.pco.parliament.govt.nz)

The enactment of the Criminal Proceeds (Recovery) Act 2009 is a significant enhancement to the laws governing recovery of proceeds of criminal offending and will strengthen New Zealand's ability to provide mutual legal assistance in relation to the offence of foreign bribery. The Act contains provisions amending the 1992 Mutual Assistance in Criminal Matters Act (MACMA) and introduces civil processes for providing assistance to overseas jurisdictions seeking to recover profits received from business deals secured by payments of bribes even if a conviction has not been secured. It enables New Zealand to assist foreign jurisdictions in enforcing civil and criminal restraining and forfeiture orders in New Zealand. The changes are intended to make the procedural requirements relating to the registration of foreign restraining and forfeiture orders more workable, and to minimise the risk of people re-litigating in New Zealand matters on which they have already been heard in a foreign country. The Bill amends the MACMA so that New Zealand can accept requests to enforce foreign civil as well as criminal orders.

New Zealand has also enacted the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. The AML-CFT Act introduces new customer identification, account and transaction monitoring, record keeping and reporting requirements for financial institutions and designated non-financial businesses and professions. It also establishes a new supervisory framework to monitor and enforce compliance with these requirements. Finally the AML-CFT Act strengthens the existing cross-border cash reporting regime. These measures are intended to improve New Zealand's compliance with the 2003 FATF Recommendations on money laundering and the FATF Special Recommendations on terrorist financing. The Act comes into force in 2011. New Zealand was evaluated by the FATF in 2009.

### ***Other Information***

#### ***Relevant Authorities***

- Enforcement

**New Zealand Police – Office of the Commissioner,**  
PO Box 3017, Wellington, New Zealand  
Telephone: 0064 4 474 9499, Facsimile: 0064 4 498 7400  
Website: [www.police.govt.nz](http://www.police.govt.nz)

**Serious Fraud Office – The Director,**  
Duthie Whyte Building, Cnr Mayoral & Wakefield Streets,  
Auckland, New Zealand  
Telephone: 0064 9 303 0121, Facsimile: 0064 9 303 0142  
Website: [www.sfo.govt.nz](http://www.sfo.govt.nz)

- Policy

**The Ministry of Justice, Secretary of Justice,**  
PO Box 180, Wellington, New Zealand  
Telephone 0064 4 918 8800, Facsimile: 0064 4 918 8820,  
Website: [www.justice.govt.nz](http://www.justice.govt.nz)

### ***Signature/ratification of other relevant international instruments***

New Zealand signed the United Nations Convention against Corruption on 9 December 2003 and intends to ratify that Convention once domestic legislation implementing it is in place. Policy development of these proposals is underway.

New Zealand is member of the Financial Action Task Force on Anti-Money Laundering and Counter Terrorist Financing (FATF). The New Zealand Government endorsed the FATF Forty Recommendations on Anti-Money Laundering and the Nine Special Recommendations on Counter-Terrorism Financing in June 2003.

New Zealand ratified the UN Convention against Transnational Organized Crime in 2002.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (May 2002)  
<http://www.oecd.org/dataoecd/51/62/2088257.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (October 2006)  
<http://www.oecd.org/dataoecd/57/38/37658136.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (March 2009)  
<http://www.oecd.org/dataoecd/7/57/42486288.pdf>

## NORWAY

(Information as of 20 May 2009)

### *Date of deposit of instrument of ratification/acceptance or date of accession*

The instrument of ratification was deposited 18.12.1998

### *Implementing legislation*

- a) *The entry into force of the implementing legislation was 01.01.1999*

Implementation of the Convention into Norwegian Penal Law was done by amending the already existing section 128 of the Penal Code, by adding a paragraph on the active bribery of foreign public servants and servants of public international organisations. After the amendment, section 128 reads:

*Any person who by threats or by granting or promising a favour seeks to induce a public servant illegally to perform or omit to perform an official act, or who is accessory thereto, shall be liable to fines or imprisonment for a term not exceeding one year.*

*The term public servant in the first paragraph also includes foreign public servants and servants of public international organisations*

*The provision of the previous section, third paragraph, shall apply accordingly.*

*Section 128 of the Penal Code, is partly repealed after the coming into force of new Penal Code Provisions on 04.04.2003, and now only covers threats.*

- b) *The implementing legislation, as amended, reads:*

#### *Section 276a*

*Any person shall be liable to a penalty for corruption who*

*a) for himself or other persons, requests or receives an improper advantage or accepts an offer of an improper advantage in connection with a post, office or commission, or*

*b) gives or offers anyone an improper advantage in connection with a post, office or commission.*

*By post, office or commission in the first paragraph is also meant a post, office or commission in a foreign country.*

*The penalty for corruption shall be fines or imprisonment for a term not exceeding three years. Complicity is punishable in the same manner.*

#### *Section 276b:*

*Gross corruption is punishable by imprisonment for a term not exceeding 10 years. Complicity is punishable in the same manner.*

*In deciding whether the corruption is gross, special regard shall inter alia be paid to whether the act has been committed by or in relation to a public official or any other person in breach of the special confidence placed in him as a consequence of his post, office or commission, whether it has resulted in a considerable economic advantage, whether there was a risk of significant economic or other damage or whether false accounting information has been recorded or false accounting documents or false annual accounts have been prepared.*

*In addition, Norway has criminalized trading in influence, Penal Code, Section 276c:*

*Any person shall be liable to a penalty for trading in influence who*

*a) for himself or other persons, requests or receives an improper advantage or accepts an offer of an improper advantage in return for influencing the performance of a post, office or commission, or*

*b) gives or offers anyone an improper advantage in return for influencing the performance of a post, office or commission.*

*By post, office or commission in the first paragraph is also meant a post, office or commission in a foreign country.*

*The penalty for trading in influence shall be fines or imprisonment for a term not exceeding three years. Complicity is punishable in the same manner.*

***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

The Penal code section 317 covers the offence of money laundering. All criminal offences are regarded as predicate offences.

A new Money Laundering Act is in force from 15.04.2009. The new act implements the third EU Directive on Money Laundering and takes into consideration recommendations made by the FATF.

***Other information***

*Relevant authorities (in particular to whom report information on a bribery offence), including special commissions*

ØKOKRIM (national Authority for Investigation and Prosecution of Economic and Environmental Crime) has a specialized anti-corruption team. ØKOKRIM has established a hot-line ("tipstelefon").  
<http://okokrim.no>

Ministry of Foreign Affairs

Ministry of Justice

*Relevant Internet links to national implementing legislation*

<http://www.lovdato.no>

### *Signature/Ratification of other relevant international instruments*

Norway ratified the Council of Europe Criminal Law Convention on Corruption without reservations on 02.03.2004. The Convention entered into force on 01.07.2004.

Norway signed the Council of Europe Civil Law Convention on 04.11.1999 and ratified it on 12.02.2008.

Norway ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime on 16.11.1994.

Norway signed the UN Convention against Corruption (UNCAC) on 09.12.2003 and ratified the UNCAC on 29.06.2006.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (April 1999)  
<http://www.oecd.org/dataoecd/15/35/2389183.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (April 2004)  
<http://www.oecd.org/dataoecd/3/28/31568595.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (March 2007)  
<http://www.oecd.org/dataoecd/35/26/38284036.pdf>

## POLAND

*(Information as of 1 October 2011)*

### ***Date of deposit of instrument of ratification / acceptance or date of accession***

The ratification bill, which was approved by the two chambers of Parliament in January 2000, received presidential approval on 11 July 2000 and was published in the Journal of Laws of 2001, No 23, item 264.

The instrument of ratification was deposited with the OECD Secretary General on 8 September 2000.

### ***Implementing legislation***

Act of 9 September 2000 (Journal of Laws of 2000, No 93, item 1027) which entered into force on 4 February 2001 introduced amendments into the following legal acts:

Act of 6 June 1997 Penal Code (Journal of Laws of 1997, No 88, item 553, with further amendments);

Act of 6 June 1997 Code of Penal Procedure (Journal of Laws of 1997, No 89, item 555, with further amendments);

Act of 16 April 1993 on combating unfair competition (Journal of Laws of 1993, No 47, item 211, with further amendments);

Act of 10 June 1994 on public procurement (Journal of Laws of 2002, No 72, item 664, with further amendments);

Act of 29 August 1997 The Law on Banks (Journal of Laws of 2002, No 72, item 665, with further amendments).

The key elements of the implementing act were: the criminalisation of active and passive bribery of foreign public officials, the administrative responsibility of legal persons (subsequently replaced by the Act on Liability of Collective Entities [...], see below), the provisions facilitating better mutual legal cooperation and the exclusion of companies having been found to bribe from public procurement contracts.

Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited under Penalty (Journal of Laws of 2002, No 197, item 1661, with further amendments) entered into force on 28 November 2003 and replaced the provisions on administrative responsibility of legal persons introduced by the Act of 9 September 2000 (mentioned above). The Act regulates in a comprehensive manner the liability of collective entities, including liability for acts of active and passive bribery. It introduces a broad definition of collective entities subject to such liability, which comprises legal persons and organisational entities without legal personality. The Act provides for a number of sanctions, beginning with fines and forfeiture of benefits and other, such as ban on promoting or advertising business activities, products or services, ban on using financial support from public funds and aid provided by international organisations, ban on applying for public procurement contracts; ban on pursuing indicated business activities.

***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

***Recommendations for remedial action under Phase 1***

According to the Phase 1 Evaluation, the Polish legal system should:

- cover the case where a material benefit (i.e. pecuniary benefit) goes to a third party;
- re-formulate the provisions on legal responsibility of legal persons;
- limit the discretion in deciding on the forfeiture of the bribes (e.g. by issuing guidelines);
- confirm whether taxation of the proceeds of corruption and the deduction of the bribe are possible.

The recommendation concerning responsibility of legal persons was implemented by the above mentioned Act of 28 October 2002. The problem of discretion and third party benefit was solved by relevant amendments to the Penal Code (art. 44 and 45), introduced by the Act of 13 June 2003 (Journal of Laws of 2003, No 111, item 1061). The taxation of the proceeds of corruption and the deduction of bribes are not possible under Polish law (however there is no explicit regulation). As there were no cases of criminal proceedings concerning corruption of foreign public officials reported so far, no observation about the practice of these provisions can be made.

***Countries' international commitments arising from other international instruments***

Poland is a state party to several international instruments listed below.

Since 20 May 1999 Poland is a Member State of the Group of States against Corruption (GRECO).

Since 1 May 2004 Poland is a Member State of the European Union, which involves – among others – the cooperation with OLAF (European Anti Fraud Office).

***Other information***

***Relevant authorities***

All allegedly committed offences should be reported to the Police (contact details are available at: [www.kgp.gov.pl](http://www.kgp.gov.pl), including contact details of all special Police units for combating corruption within the regional headquarters of the Police, <http://www.policja.pl/portal/pol/101/1654/>), the public prosecution authorities (contact details available at: <http://www.pg.gov.pl/index.php?0,807>) or to the Central Anticorruption Bureau (contact details available at: <http://www.cba.gov.pl/portal/en/5/6/Contact.html>).

Authorities responsible for Mutual Legal Assistance:

1) Prosecution Authority:  
Prokuratura Generalna - Office of the Prosecutor General  
Department of International Cooperation  
ul. Barska 28/30  
02 – 315 Warsaw  
Poland  
tel. 48 (22) 318 94 50  
fax. 48 (22) 318 94 51  
e-mail: [pr.bopz@ms.gov.pl](mailto:pr.bopz@ms.gov.pl)

2) Ministry of Justice:  
Ministerstwo Sprawiedliwości – Ministry of Justice  
Judicial Assistance and European Law Department  
Al. Ujazdowskie 11  
00 – 950 Warsaw  
Poland  
Tel. (48) 22 23 90 870  
Fax. (48) 22 62 80 949  
e-mail: [dwm@ms.gov.pl](mailto:dwm@ms.gov.pl)

*Relevant internet links to national implementing legislation*

Acts of Polish law (including laws on preventing corruption) are available on the website of Polish Parliament: [www.sejm.gov.pl/prawo/prawo.html](http://www.sejm.gov.pl/prawo/prawo.html) ; Journals of Law since 1995 are available also on the website: [www.lex.pl](http://www.lex.pl) .

*Signature/ratification of other relevant international instruments*

Poland is a party to the following international instruments on combating corruption:

- United Nations Convention against Corruption (signed on 10 December 2003, ratified on 15 September 2006);
- The Council of Europe Criminal Law Convention on Corruption (signed on 27 January 1999, ratified on 11 December 2002);
- The Council of Europe Civil Law Convention on Corruption (signed on 3 April 2001, ratified on 11 September 2002);
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (signed on 5 November 1998, ratified on 20 December 2000);
- European Union Convention on the Fight against Corruption involving Officials of the European Communities or Officials of the EU Member States (ratified on 25 January 2005)
- United Nations Convention against Transnational Organized Crime (signed on 12 December 2000, ratified on 12 November 2001);
- European Union Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (February 2001)  
<http://www.oecd.org/dataoecd/39/45/2020928.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (January 2007)  
<http://www.oecd.org/dataoecd/3/54/38030514.pdf>



Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)

<http://www.oecd.org/dataoecd/31/47/44424102.pdf>

## **PORTUGAL**

*(Information as of 16 November 2012)*

### ***Date of deposit of instrument of ratification/ acceptance or date of accession***

Portugal ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 31 March, 2000 and deposited its instrument of ratification on 21 November, 2000.

### ***Implementing legislation***

#### ***Identification of the law***

The Convention has been implemented through Law no. 13/2001 of 9 June 2001.

Mentioned Law amended Decree-Law no. 28/84 of 20 January 1984, namely introducing a new provision – Article 41-A «active corruption against international business».

At the time, Portugal made an amendment to the Criminal Code and to no. 34/87 in the form of Law no. 108/2001, in order to extend the definition of domestic public officials to include certain foreign public officials, for the purpose of the existing domestic bribery offences thereunder.

Later on, Portugal enacted Law no. 20/2008, of 21st April 2008, establishing the new criminal regime to combat corruption in international trade and in the private sector, in compliance with the EU Council Framework Decision no. 2003/568/JHA, of 22nd July 2003. This legal instrument establishes the criminal liability framework for crimes of corruption committed in the specific context of international trade and private activity.

#### ***Date of adoption and date of entry into force***

9 June 2001.

(Law no. 13/2001 has been revoked by Law no. 20/2008).

### ***Other relevant Laws, regulations or decrees that have an impact on a country's implementation of the OCDE Convention or the Recommendations***

*Law no. 144/99, of 31<sup>st</sup> August*, international legal cooperation in criminal matters (including MLA, extradition, joint investigation teams).

*Law no. 1/2001, of 14th August* on the organization and functioning of the political parties, modifying the financing regime of the political parties and elections campaigns.

*Decree no. 58/2001 of 15th November*, of the President of the Republic ratifying the EU Convention on the Fight against corruption in which officials of the European Communities or of the Member States of the European Union are implied.

*Law no. 5/2002, of 10th January*, establishing measures to fight against organized and economic and financial crime.

*Law no. 52/2003, of 22st August*, on measures to combat terrorism, including terrorism financing.

*Law no. 50/2007, of 31st August*, establishing a new legal framework concerning criminal liability for corruption in the field of sports (includes corporate liability in this regard).

*Law no. 59/2007, of 4th September*, amending the Criminal Code – includes the criminal liability of legal persons, namely for crimes of corruption and extends the criminal record to legal persons.

*Law no. 67/2007, of 31st December* establishing the legal framework of civil (non contractual) liability of the State and of public entities.

*Decree-Law no. 18/2008, of 29th January*, approving the Code of Public Procurement, establishing the procedural and substantive framework for the public contracts with the nature of an administrative contract. This legal instrument establishes among other, that the companies or entities that have been convicted by a final decision for the crimes of corruption or money laundering cannot apply in a competition for a public tender.

*Law no. 19/2008, of 21st April*, which approves several measures related to the fight against corruption, namely pertaining to whistleblowers.

*Law no. 25/2008, of 5th June*, establishing preventive and repressive measures to fight against the laundering of benefits and terrorism financing, transposing into domestic law EC Directive 2005/60/CE of 26<sup>th</sup> October 2005 and EC Directive 2006/70/CE, of 1<sup>st</sup> August 2007 (Mentioned Law no. 25/2008 repealed Law no. 11/2004 of 27<sup>th</sup> March).

*Law no. 29/2008, of 4th July*, amending Law no. 93/99, of 14<sup>th</sup> July concerning implementing measures aimed at witness protection in criminal procedures.

*Law no. 31/2008, of 6th August*, approving the institutional organization of the Criminal Police, establishing the National Unit against Corruption.

*Law no. 49/2008, of 27th August*, approving the Law of the organization of the criminal investigation.

*Law no. 54/2008 of 4th September*, creating the CPC – Council for the Prevention of Corruption (an independent administrative entity with competence namely to follow the implementation of legal instruments and provide with options on adoption of legal instruments (domestic or international), to elaborate best practices guidelines and to cooperate with international organisms as well as to present recommendations on this matters.

*Law no. 25/2009, of 5th June* transposing EC Council Framework Decision 2003/577/ on the execution in the EU of freezing orders of property or evidence.

*Law no. 38/2009, of 20<sup>th</sup> July*, establishes the objectives, priorities and orientations for the criminal policy, for the period 2009-2011, in compliance with Law no. 17/2006, of 23<sup>rd</sup> March approving the Framework Law on criminal policy.

*Law no. 74/2009, of 12th August*, transposing EU Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities.

*Law no. 88/2009, of 31<sup>st</sup> August*, transposing EU Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

*Law no. 93/2009, of 1<sup>st</sup> September* transposing EU Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties.

*Law no. 114/2009 of 22<sup>nd</sup> September*, adapting the criminal identification regime to the criminal liability of legal persons and creating the criminal record database for legal persons.

*Decree-Law no. 42/2009, of 12<sup>th</sup> January* establishing the new competences of the Criminal Police Units and enlarging competences of the Portuguese FIU to the financing of terrorism prevention.

*Decision no. 11389/2010 of 6<sup>th</sup> July* of the Minister of Justice establishing an *ad-hoc* working group to elaborate a draft bill on the creation of the Portuguese Assets Recovery Office (ARO).

*Law n<sup>o</sup> 26/2010, of 30<sup>th</sup> August*, amendment to the Code of Criminal Procedure.

*Law no. 32/2010, of 2<sup>nd</sup> September*, new amendments to the Criminal Code (for instance, the distinction between passive corruption for illicit and licit acts has been suppressed; the statute of limitation for corruption offences has been enlarged to 15 years; arbitrators, jurors and experts have been included in the definition of public officials).

*Law no. 34/2010, of 2<sup>nd</sup> September*, amendment to the professional legal regime of public officials (prohibiting the accumulation of public and private functions).

*Law no. 36/2010, of 2<sup>nd</sup> September*, amendment to the Credit Institutions and Financial Companies Legal Framework (creation in the Central Bank of a detailed banking accounts central database that could be acceded by judges and public prosecutors in the framework of criminal investigations and criminal cases).

*Law no. 37/2010, of 2<sup>nd</sup> September*, derogation to the banking secrecy regime.

*Law no. 38/2010, of 2<sup>nd</sup> September*, amendment to Law no. 4/83 on the public control of richness of the ones holding political positions.

*Law no. 41/2010, of 3<sup>rd</sup> September*, amendment to Law no. 34/87 applicable to the ones holding political duties including members of domestic public assemblies.

*Law no. 42/2010, of 3<sup>rd</sup> September*, second amendment to Law no. 93/99, of 14<sup>th</sup> July concerning implementing measures aimed at witness protection in criminal procedures.

*Council of Ministers Resolution no. 71/2010, of 2<sup>nd</sup> September* with the purpose to strengthen the coordination and preparation of measures for the enforcement of measures for the fight against corruption adopted by the Assembly of the Republic (Laws no. 32/2010 to no. 42/2010).

*Law no. 4/2011* amending the Criminal Code regarding the aggravation of the penalty in cases of unduly acceptance of advantages, passive and active corruption.

*Law no 45/2011 of 24 June*: Creation, under the remit of the Criminal Police, of the Portuguese Asset's Recovery Office (ARO) -- in compliance with the Council Decision 2007/845/JHA, of 6 December, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime which is as well applicable to all types of corruption offences. The ARO's mission is the identification, tracing and freezing of proceeds from, or property related to, crime, either at national or international level, to ensure the cooperation between assets recovery offices of other States and to perform all other powers legally conferred upon it. The ARO is also entrusted with the collection, analysis and processing of statistical data on the freezing, confiscation and allocation of proceeds from, or property related to, crime.

### ***Other information***

#### *Signature/ratification of other relevant international documents*

Portugal ratified the **Council of Europe Criminal Convention on Corruption** (Deposit of the ratification instrument on 7<sup>th</sup> May 2002).

Portugal ratified the **UN Convention against Transnational Organized Crime** (Deposit of the ratification instrument on 10<sup>th</sup> May 2004).

Portugal ratified the **UN Convention against Corruption** (Decree of the President of the Republic no. 97/2007, of 21<sup>st</sup> September).

Portugal ratified the **Council of Europe Convention against the Laundering, Detection, Seizure and Confiscation of the Proceeds of Crime and the Terrorism Financing** (Deposit of the ratification instrument on 22<sup>nd</sup> April 2010).

The ratification by Portugal of the **Additional Protocol to the Council of Europe Criminal Convention on Corruption** is ongoing.

The internal works for the ratification by Portugal of the **Council of Europe Civil Convention on Corruption** have already been initiated.

### ***Other information***

#### *Relevant authorities*

Information on bribery offences must be reported to the Public Prosecutors Office. They can also be reported to the Criminal Police.

Usually the investigations of the crimes of corruption are carried out by the Criminal Police acting under the instructions and coordination of Public Prosecutors.

#### *Relevant Internet links to national implementation legislation*

[www.dgpj.mj.pt](http://www.dgpj.mj.pt)

[www.gddc.pt](http://www.gddc.pt)

[www.digesto.pt](http://www.digesto.pt)

[www.infocid.pt](http://www.infocid.pt)

[www.eusoujurista.pt](http://www.eusoujurista.pt)

[www.pgdlisboa.pt](http://www.pgdlisboa.pt)

### ***Working Group on Bribery Monitoring Reports***

**Phase 1:** Review of Implementation of the Convention and 1997 Recommendation (May 2002)

<http://www.oecd.org/dataoecd/51/59/2088284.pdf>

**Phase 2:** Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2007)

<http://www.oecd.org/dataoecd/28/24/38320110.pdf>

**Phase 2: Follow-up Report** on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)

<http://www.oecd.org/dataoecd/31/47/44424102.pdf>

## **SLOVAK REPUBLIC**

*(Information as of 7 December 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Slovak Republic signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 17 December 1997 and ratified it on 14 April 1999.

The instrument of ratification was deposited on 24 September 1999.

Convention entered into effect on 23 November 1999.

### ***Implementing legislation***

Criminal Code (Act No. 140/1961 Coll.)<sup>12</sup> was amended by the Act no. 183/1999 Coll. which introduced Article 161b penalising bribery of a foreign public official in international business transactions.

The Slovak Republic introduced the corporate liability into its legal order by Act no. 224/2010 Coll. which amended the Criminal Code (new sections 83a and 83b of the Criminal Code). The act no. 224/2010 Coll. entered into force on 1 September 2010.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

*Criminal Code and Code of Criminal Procedure:* On 1 January 2006 the re-codification of the Slovak criminal law, as based on the work of the Commission for Re- codification of Criminal Law, took effect. The Criminal Code (Act No. 300/2005 Coll. in the wording of latter amendments) together with the Code of Criminal Procedure (Act No. 301/2005 Coll. in the wording of latter amendments) and related laws were adopted by the National Council of the Slovak Republic respectively. Fulfilling international obligations arising from international treaties on fight against corruption and binding for the Slovak Republic, was amongst the aims as set out in preparatory works.

### ***Relevant provisions of the Criminal Code:***

- Statute of limitations for the foreign bribery offence: limitation periods vary (from 5 to 10 years) depending on the size of bribe (Section 87 in connection with Section 334)
- Separate definition of foreign public official pursuant to Section 128 paragraph 2
- Separate definition of bribe pursuant to Section 130 paragraph 3 describing bribe as any kind of thing or performance of property or non- property nature to which there is no legal entitlement and thus allowing no exception like e.g. small facilitation payments, as supported also by the recent Slovak Courts' rulings in bribery cases.

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<sup>12</sup> This Act was repealed by a new Criminal Code (Act No. 300/2005 Coll.) which entered into force on 1 January 2006. The new Criminal Code penalises bribery of a foreign public official in the section 334.

- Availability of using an (undercover) “agent” under strict conditions set out in Section 30 in connection with Section 117 (especially paragraph 2) of the Code of Criminal Procedure for the purposes of detection and prosecution of bribery, including bribery of foreign public officials
- General reporting obligation regarding the offence of bribery or suspicion thereof derives from Section 340
- The court **should order the forfeiture of property** of the offender when sentencing perpetrators of criminal offences referred in Section 58 para. 3 of the Criminal Code, including criminal offence of accepting a bribe pursuant to Section 328 para. 3 or Section 329 para 3 of the Criminal Code or criminal offences of an active bribery pursuant to Sections 334 para 2 or 335 para. 2 of the Criminal Code.
- new possibility for a court (according to Section 83 para 5 of the Criminal Code) to order a **confiscation of a thing in the value equal** to the thing which is unreachable or no identifiable or it is mixed with a property of perpetrator or with a property of another person acquired in the conformity with law.
- enlargement of the possibility to prosecute a criminal offence of **accepting a bribe** (see Section 330 para. 1 of the Criminal Code) and of **active bribery** (see Section 334 para 1 of the Criminal Code) in relation to the foreign public official: this possibility is no more limited only to an international business transaction).
- precision of **definition of a foreign public official** (see Section § 128 para 2 letter a of the Criminal Code).

*Relevant provisions of the Code of Criminal Procedure:*

- Availability of using broad range of surveillance techniques as stipulated in Chapter 4 of the first part of the Code of Criminal Procedure, Sections 108- 112
- Provisions on undercover “agent” (see above)
- The provisions of Section 117 paragraph 3 of the Code of Criminal procedure (operation of a agent under a temporary or a permanent legend) may be exceptionally applied, as appropriate, to the examination of **witnesses** for the purpose of disclosing felonies, *corruption*, criminal offences of the abuse of power by a public official, or criminal offences of laundering the proceeds of crime.

*Income Tax Act* (Act No. 595/2003 Coll. as amended by the Act no. 534/ 2005 Coll.) expressly denies tax deductibility of bribes in Section 21 paragraph 1 letter c)

*Act on Auditors, Auditing and Supervision over Execution of Audit* (Act No. 540/ 2007) which entered into effect on 1 January 2008 expressly stipulates in Section 27 paragraph 3 the obligation of auditors to report without undue delay the suspicions of bribery, as based on evidence obtained in the course of carrying out the audit, to law enforcement authorities by the means of written notice sent to them.

*Act on Accounting* (Act No. 431/ 2002 Coll. in the wording of the latter amendments).

*Act on Protection against Legalisation of Proceeds from Criminal Activity and on Protection against Financing of Terrorism* (Act No. 297/ 2008 Coll.). (Relevant provisions) The act was adopted by the National Council of the Slovak Republic (by its Resolution No. 931) on 2 July 2008 and entered into force



on 1 September 2008. It contains, inter alia, provisions defining “unusual business transaction” in Section 4, “politically exposed person” in Section 6 and provisions related thereto as well (e.g. reporting obligation of “obliged persons” as stipulated by Section 17, without prejudice to the obligation to report suspicions that a criminal offence was committed to law enforcement authorities pursuant to the Criminal Code).

#### ***Section 4***

##### **Unusual Business Transaction**

1. Unusual business transaction for the purpose of this Act shall mean a legal act or other act which indicates that if it is effected it may lead to legalisation or financing of terrorism.
2. Unusual business transaction shall mean, in particular, a business (transaction):
  - a) which, with respect to its complexity, unusually high amount of financial means used or any other nature obviously deviates from the framework or nature of the specific type of business or business of a specific client
  - b) which, with respect to its complexity, unusually high amount of financial means used or any other nature has no obvious economic purpose or has no obvious statutory purpose
  - c) in respect of which client refuses to identify himself or provide data needed for carrying out the care by obliged person pursuant to Sections 10 to 12
  - d) in respect of which client refuses to provide information on anticipated business or tries to provide as little information as possible or provides such information which can be verified by the obliged person only with great difficulties or with considerable costs
  - e) in respect of which client makes a request for its execution based on a project which raises doubts
  - f) in respect of which the used financial means of low nominal value are in disproportionately high quantity
  - g) with a client in respect of whom it can be anticipated that he is not or cannot be an owner of the necessary financial means, taking into account his occupation, status or any other characteristic
  - h) in respect of which the amount of financial means at disposal of a client is manifestly disproportionate to nature or extent of his business conduct or to means declared as belonging to him
  - i) in respect of which a substantiated assumption exists that a client or an ultimate user of benefits is a person against whom international sanctions are being enforced pursuant to (provisions of) a specific statute or a person who may be in relationship with a person against whom international sanctions are being enforced pursuant to (provisions of) a specific statute or
  - j) in respect of which a substantiated assumption exists that its object is or is going to be a thing or service which may be related to a thing or service against which international sanctions are being enforced pursuant to (provisions of) specific statute

## ***Section 17***

### **Reporting Unusual Business Transaction**

1. Obligated person is obliged to report an unusual business transaction or attempt of its execution to financial intelligence unit without undue delay. Obligated person shall report also refusal to execute a requested unusual business transaction pursuant to Section 15 to financial intelligence unit without undue delay.
4. Notification of an unusual business transaction must not contain data of employee who detected an unusual business transaction.
6. Fulfilling the obligation to report an unusual business transaction to financial intelligence unit pursuant to paragraph 1 is not limited by the statutory obligation to observe secrecy pursuant to specific regulations.
7. By reporting an unusual business transaction the obligation to give notice of facts suggesting that criminal act was committed is not affected.

## ***Section 6***

### **Politically Exposed Person**

1. Politically Exposed Person for the purpose of this Act shall mean a natural person holding a public office of considerable significance who does not have a permanent residence on the territory of the Slovak Republic during the discharge of her/his office or during the period of one year after termination of discharging of a public office of considerable significance.
2. Public office of considerable significance shall mean:
  - a) Head of State, Prime Minister, Deputy Prime Minister, Minister, Head of central authority of public administration, Secretary of State or a similar deputy of Minister
  - b) Member of legislative body
  - c) Judge of the Supreme Court, judge of the Constitutional Court or other judicial body of higher instance, against decisions of which no appeal is admissible, except of specific cases,
  - d) Member of the Court of Auditors or of the Council of the Central Bank
  - e) Ambassador, Chargé d'affaires
  - f) High-ranking member of the Armed Forces
  - g) Member of managing body, supervisory body or controlling authority of state-owned enterprise or company of which the state is a proprietor or
  - h) a person holding other similar office in institutions of the European Union or international organisation

3. Politically exposed person for the purpose of this Act shall mean also a natural person, who is:
- a) a spouse or a person having similar position as a spouse of the person described in paragraph 1
  - b) a child, son-in-law, daughter-in-law of the person described in paragraph 1 or a person having similar position as a son-in-law or daughter-in-law of the person described in paragraph 1 or
  - c) a parent of the person described in paragraph 1
4. Politically exposed person for the purpose of this Act shall mean also a natural person who is known to be an ultimate user of benefits
- a) of a same client or who otherwise controls a same client as the person described in paragraph 1 or a person conducting business together with the person described in paragraph 1 or
  - b) of a client established for the benefit of the person described in paragraph 1

### ***Other information***

#### *Relevant authorities*

##### Bureau of the Fight against Corruption of the Presidium of the Police Corps:

Postal Address:

Račianska 45, 812 72 Bratislava, Slovak Republic

Postal Address of head office:

Novosvetská 8, Bratislava, Slovak Republic

Web: <http://www.minv.sk/?kontakty-7>

##### Office of the Attorney General:

Postal Address: Special Prosecutor's Office

Štúrova 2

812 85 Bratislava, Slovak Republic

or

Suvorovova ulica

Pezinok 90201, Slovak Republic

Web: <http://www.genpro.gov.sk/index/go.php?id=459>

#### *Relevant Internet links to national implementing legislation*

[www.minv.sk](http://www.minv.sk) – Ministry of Interior of the Slovak Republic, Bureau of the Fight against Corruption

[www.genpro.gov.sk](http://www.genpro.gov.sk) – Office of the Attorney General

[www.justice.gov.sk](http://www.justice.gov.sk) – Ministry of Justice of the Slovak Republic

### ***Signature/Ratification of other relevant international instruments***

Concerning other relevant international documents aimed, inter alia, at fighting corruption the Slovak Republic has signed and ratified the following conventions and protocols:

#### ***United Nations***

1. The UN Convention Against Corruption was signed on behalf of the Slovak Republic (hereinafter only "was signed") on 9 December 2003 and subsequently ratified by the president (hereinafter only "was ratified") on 25 April 2006. With regard to the Slovak Republic it entered into force (hereinafter only "it entered into force") on 1 July 2006;

#### ***Council of Europe***

2. The Council of Europe Criminal Law Convention on Corruption was signed on 27 January 1999 and ratified on 25 May 2000. It entered into force on 1 July 2002;
3. The Additional Protocol to the Criminal Law Convention on Corruption was signed on 12 January 2005 and ratified on 6 April 2005. It entered into force on 1 August 2005.
4. The Council of Europe Civil Law Convention on Corruption was signed on 8 June 2000 and ratified on 5 May 2003. It entered into force on 1 November 2003;
5. The Council of Europe Convention on Searching, Detection, Seizure and Confiscation of the Proceeds from Crime was signed on 8 September 1999 and ratified on 12 April 2001. It entered into force on 1 September 2001.

#### ***European Union***

6. EU Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union. The instrument of accession was signed on 25 August 2004 and deposited on 30 September 2004. The convention entered into effect on 28 September 2005.
7. Council Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector]

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (February 2003)  
<http://www.oecd.org/dataoecd/16/15/2389408.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (December 2005)  
<http://www.oecd.org/dataoecd/28/15/35778308.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)  
<http://www.oecd.org/dataoecd/62/38/40027840.pdf>

## SLOVENIA

(Information as of 1 October 2012)

### *Date of deposit of instrument of ratification/acceptance or date of accession*

6 September 2001 (The Law on the Ratification of Convention entered into force on 5 November 2001)

### *Implementing legislation*

#### *Criminalisation of bribery – Criminal Code*

Criminal Code of 2008 (Official Gazette RS, no. 55/08, 39/09 and 91/11) entered into force on 1 November 2008 and was significantly amended in 2011 (amendments entered into force in May 2012). Article 99 of the Criminal Code defines »domestic public officials« in sub-paragraph 1, 2, 3 and 4 of paragraph 1, and »foreign and international public officials« in sub-paragraph 6, 7 and 8 of paragraph 1. The definition relates to Articles 261 (Acceptance of Bribes), 262 (Giving Bribes), 263 (Accepting Benefits for Illegal Intermediation) and 264 (Giving of Gifts for Illegal Intervention) of the Criminal Code and includes passive and active bribery and active and passive trading in influence.

#### *Liability of Legal Persons*

Law on the Liability of Legal Persons for Criminal Offences of 1999 (Official Gazette RS, no. 59/99, 50/04, 65/08 and 57/12) entered into force on 21 October 1999. The last Amendments to the Law on the Liability of Legal Persons for Criminal Offences entered into force in August 2012. The Law introduced a comprehensive system of corporate criminal liability, prescribed sanctions and specificities within criminal procedure when prosecuting legal entities. It covers all bribery and corruption-related offences, including bribery of foreign public officials.

#### *Money Laundering*

Article 245 of Criminal Code of 2008 – The Republic of Slovenia adopted an all-crimes approach to money laundering offences, all bribery and corruption-related offences, including bribery of foreign public officials are predicate offences to the offence of money laundering.

Law on the Prevention of Money Laundering and Terrorism Financing of 2007 (Official Gazette RS, no. 60/07, 19/10 and 77/11) entered into force on 21 July 2007.

#### *Effectiveness of investigation and prosecution*

Amendments to the Criminal Procedure Code of 1999, 2004 2009 and 2011 (the last entered into force in May 2012) expanded the powers of the police/prosecution to use special investigative means (interception of telecommunications, electronic surveillance, simulated corruption offences covert access to and monitoring of financial data and transactions, etc.) as well as powers of identification and seizure of proceeds of crime in investigation of all bribery and corruption related offences, including bribery of foreign public officials. The 2009 amendments in Article 160a define cooperation during pre-trial procedure especially in a case of organised and economic crime. The public prosecutor may in exercising his/her authority set guidelines for police work, work of the joint investigation teams and work of other competent authorities dealing with tax, customs, financial transactions, securities, competition protection, prevention of money laundering, prevention of corruption, illegal drugs and inspection supervision by giving directions, expert opinions and proposals for the information gathering and execution of other

measures coming within the competence, with a view to detecting a criminal offence and its perpetrator or gathering information necessary for his/her decision. The large 2012 amendments initiated (in-between) simplified procedure based on agreement on the confession of guilt (this agreement is a kind of contract between the defendant and state prosecutor where the parties define the condition(s) under which the defendant is prepared to confess the guilt at the court), and special phase of pre-trial hearing where the defendant pleads guilty or not guilty. Both new institutes, which are aimed at more speedy criminal procedure, refer also to corruption and corruption-related offences.

The National Bureau of Investigation became operational on 1 January 2010. The Bureau is a specialised criminal investigation unit at the national level for the detection and investigation of serious criminal offences, especially economic and financial crime and corruption and in certain cases organised crime, cybercrime and more difficult forms of conventional crime.

***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

Integrity and Prevention of Corruption Act (text available in [English](#) or [Slovenian](#)) entered into force on 5 June 2010 and has since been amended twice, most recently on 4 June 2011 (Official Gazette of the Republic of Slovenia no. 45/10, 26/11 and 43/11). It adopted a comprehensive, interdisciplinary approach to preventing and controlling of corruption. For the purpose of strengthening the rule of law, the Act lays down the measures and methods aimed at strengthening integrity and transparency as well as preventing corruption and avoiding and combating conflicts of interest.

In line with the Integrity and Prevention of Corruption Act, the Commission for the Prevention of Corruption (hereinafter: the Commission) remains an independent state body with the following tasks and powers:

- to prepare expert groundwork for strengthening integrity and training programmes;
- to provide training for the persons responsible for integrity plans;
- to prepare, together with the representatives of equivalent public law entities or their associations, models of their integrity plans;
- to provide advice on strengthening integrity and preventing and eliminating the risks of corruption in the public and private sectors;
- to monitor and analyse data on the development and accomplishment of tasks aimed at preventing corruption in the Republic of Slovenia;
- to monitor the state of affairs in the field of international corruption, and to monitor and analyse data on the number and manifestations of all forms of criminal offences involving elements of corruption in the Republic of Slovenia;
- to perform lobbying-related tasks;

- to adopt principled opinions, positions, recommendations and explanations in respect of
- issues connected with the contents of this Act;
- to ensure the implementation of the resolution regulating the prevention of corruption in
- the Republic of Slovenia;
- to draft amendments to the resolution regulating the prevention of corruption in the Republic of Slovenia and propose that they be discussed by the Government, who then in turn submits them to the National Assembly for adoption;
- to give consent to the action plans of the individual authorities defined in the resolution, these plans relating to the implementation of the resolution regulating the prevention of corruption in the Republic of Slovenia;
- to call on the competent authorities in the Republic of Slovenia to meet the obligations arising from international instruments relating to the prevention of corruption, and to provide them with proposals regarding the method of implementation of these obligations;
- to cooperate with the competent State bodies in drafting regulations on the prevention of corruption;
- to monitor the implementation of the regulations referred to in the preceding indent and to propose initiatives for amendments to them;
- to provide its opinion on proposals for laws and other regulations before they are discussed by the Government, particularly in respect of the conformity of the provisions contained within these proposals for laws and other regulations with the laws and regulations regulating the prevention of corruption, and the prevention and elimination of conflicts of interest;
- have the option available to submit initiatives to the National Assembly and the Government to regulate a particular area by adopting a law or any other regulation in accordance with its tasks and powers;
- to cooperate with the corresponding authorities of other countries and international structures, and with international non-profit private sector organisations engaged in the prevention of corruption;

- to cooperate with scientific, professional, media and non-profit organisations from the private sector in the prevention of corruption;
- to prepare starting points for codes of conduct and
- to perform, upon the receipt of payment, expert tasks related to the preparation and development of integrity plans and the preparation of measures for the prevention of corruption for private sector users.

One of the important provisions of the Act is that the Commission is now also the designated monitoring body for all foreign bribery cases. According to the Act international corruption refers to corruptive act where at least one of the participants is a natural or legal person from abroad. The police, state prosecutor's offices and courts are obliged to inform the Commission of the concluded proceedings of criminal offences of corruption in which Slovenian or foreign citizens or legal persons holding a registered office in the Republic of Slovenia are suspected, informed, accused or convicted of such crime.

Other important novelties of the Act are:

- Effective protection of whistleblowers,
- Registration of lobbying,
- Cooperation with non-profit organizations from private sector dealing with prevention of corruption and representative trade unions from public sector,
- Obligatory inclusion of the anticorruption clause in public sector contracts,
- Giving the Commission an authorization to pass a fine if the public official or other person obliged to act in compliance with the law doesn't comply.

National Anti-Corruption Strategy has been adopted by the Parliament in 2004. The Strategy lists 172 long-term legislative, administrative, institutional and practical measures aimed long-term and sustainable reduction of risks for corruption in all spheres of society.

Amendments to the Court Act of 2009 (Official Gazette RS, no. 96/09) entered into force on 1 January 2010 and constituted a specialized department established at the Regional court of Ljubljana. The department's task is judging in serious cases regarding organised and economic crime, terrorism, corruption and other similar criminal offences.

Forfeiture of Assets of Illegal Origin Act (Official Gazette RS, no. 91/11) that entered into force on 30 May 2012 is regulating civil confiscation of illegal assets, based on the financial investigation of State Prosecutors Office, and finally performed by civil court. More in detail, this act is regulating the terms and conditions, the procedure and the responsible authorities for financial investigation, for the temporary insurance of the assets that should be object of confiscation, the secure storage of such assets and final confiscation of assets of illegal origin, the responsibilities of the Republic of Slovenia, and the manner in which international cooperation is to be carried out under the procedures of this act. The procedure can be initiated also in case there are reasons for suspicion that certain person committed any of corruption or corruption-related criminal offence.



## ***Other information***

### ***Relevant authorities***

#### **General Prosecutor's Office**

Trg OF 13, SI-1000 Ljubljana, Slovenia  
tel: +386 (0)1 433-04-54; fax +386 (0)1 431-03-81  
www: [www: www.dt-rs.si](http://www.dt-rs.si)  
e-mail: [dtrs@dt-rs.si](mailto:dtrs@dt-rs.si)

#### **General Police Directorate**

Stefanova 2, , SI-1000 Ljubljana, Slovenia  
tel: 386 (0)1 472-51-11;  
www: [www: www.policija.si/en](http://www.policija.si/en)

#### **Commission for the Prevention of Corruption**

Dunajska cesta 56, SI-1000 Ljubljana, Slovenia  
tel.: +386 (0)1 478-84-83; fax: +386 (0)1 478-84-72  
www: [www: www.kpk-rs.si](http://www.kpk-rs.si)  
e-mail: [anti.korupcija@kpk-rs.si](mailto:anti.korupcija@kpk-rs.si)

#### **Office for Money Laundering Prevention**

Cankarjeva 5, SI-1502 Ljubljana, Slovenia  
Tel: +386 (0)1 425 41 89; fax: +386 (0)1 425 20 87  
www: [www: www.uppd.gov.si/angl](http://www.uppd.gov.si/angl)  
e-mail: [mf.uppd@mf-rs.si](mailto:mf.uppd@mf-rs.si)

### ***Signature/Ratification of other relevant international instruments***

March 2000: ratification of the Council of Europe Criminal Law Convention on Corruption;  
April 2003: ratification of the Council of Europe Civil Law Convention on Corruption.  
January 2008 ratification of the United Nations Convention against Corruption

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (March 2005)  
<http://www.oecd.org/dataoecd/33/50/34541732.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (July 2007)  
<http://www.oecd.org/dataoecd/14/59/38883195.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (October 2009)  
<http://oecd.org/dataoecd/2/59/44001495.pdf>

## **SOUTH AFRICA**

*(Information as of 28 November 2012)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

The instrument of accession was deposited with the Secretary-General of the OECD on 19 June 2007 and came into force on 19 August 2007.

### ***Implementing legislation***

The Prevention and Combating of Corrupt Activities Act, 12 of 2004, in particular section 5, gives effect to the OECD Convention on Bribery of Public Officials in International Business Transactions. This act came into operation on 27 April 2004.

### ***Other relevant laws, regulations or decrees that have an impact on our country's implementation of the OECD Convention or the Recommendations***

- Promotion of Access to Information Act, 2 of 2000
- Promotion of Administrative Justice Act, 3 of 2000
- The Prevention of Organised Crime Act, 121 of 1998
- Financial Intelligence Centre Act, 28 of 2001
- International Cooperation in Criminal Matters Act, 75 of 1996
- The Criminal Procedure Act, 51 of 1977
- The Public Finance Management Act, 1 of 1999 as amended by Act 29 of 1999
- The National Prosecuting Authority Act, 32 of 1998 as amended by Act 56 of 2008
- The South African Police Service Act, 68 of 1995 as amended by Act 57 of 2008

The National Prosecuting Act of 1998 was amended in 2008 to the effect that the Directorate for Special Operations (DSO) was disbanded. Furthermore, an amendment was made to the South African Police Service Act of 1995 to establish the Directorate for Priority Crime Investigation (DPCI). The DPCI was established to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crime and serious corruption. Further to the DPCI, Government has established an Anti-Corruption Task Team (ACTT) consisting of members from the Department of Justice and Constitutional Development, National Prosecuting Authority, DPCI, Special Investigating Unit and the Financial Intelligence Centre. The ACTT will operate differently from the DPCI and will deal specifically with cases of corruption including bribery of foreign public officials as well as private sector corruption cases.

### ***The South African Police Service Amendment Act (Act No. 10 of 2012) signed into law***

In July 2009, the Directorate for Priority Crime Investigation (DPCI) replaced the Directorate of Special Operations (DSO) as a body responsible for the prevention, combating and investigation of

national priority offences and offences selected from the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004). Following a judgment in 2010 by the Constitutional Court that the DPCI lacked sufficient independence, the South African Police Service Amendment Act (Act No. 10 of 2012), was signed into law on the 14th of September 2012 to grant the DPCI operational independence. The law became effective on the same day.

The DPCI or HAWKS as the Directorate is also known, still forms part of the SAPS (as a Directorate within the Police) but the National Head of the DPCI, instead of the National Commissioner of the SAPS, manages and directs the Directorate. The National Head is appointed by the Minister of Police, in concurrence with Cabinet. The legislation also provides for the appointment of Provincial Heads of the DPCI as well as a Deputy Head of the DPCI.

#### *Signature/Ratification of other relevant international instruments*

South Africa has ratified the following international and regional instruments on preventing and combating corruption:

- United Nation Convention on Transnational Organized Crime: Signed on 14 December 2000, ratified on 20 February 2004.
- United Nations Convention against Corruption: signed on 9 December 2003, ratified on 22 November 2004.
- African Union Convention on Preventing and Combating Corruption: signed on 16 March 2004, ratified on 11 November 2005.
- SADC Protocol against Corruption: signed on, ratified on 15 May 2003.

#### *Other information*

##### *Relevant authorities*

Relevant authorities, to whom one may report information on a bribery offence, are the police and prosecution authorities.

- Department of Justice and Constitutional Development
- National Prosecuting Authority
- South Africa Police Services
- Financial Intelligence Centre

##### *Initiatives to promote the Convention*

South Africa has undertaken various initiatives to promote the Convention and prevent bribery of foreign public officials in international business. The initiatives include the following:

- Inclusion of the Convention as part of the training for Foreign Service and Heads of Missions,

- Business Unity South Africa (BUSA) continuously embark on awareness campaigns to their members on the Convention, OECD guidelines for Multinational Enterprises, and the OECD 2009 Recommendations. All these documents are also placed on the organization's website for continuous reference. The organization has also developed an on-line training material which includes the Convention. For more information: [www.busa.org.za](http://www.busa.org.za) and
- The South African Revenue Services has distributed the Bribery Awareness Handbook for tax examiners. The OECD Anti-bribery Convention and related material has also been placed on the SARS web site. In addition, information regarding the non-deductibility of bribes to companies has been placed on the web site and can be accessed by companies. For more information: [www.sars.gov.za](http://www.sars.gov.za)

#### *National Anti-Corruption Summit*

The National Anti-Corruption Forum (NACF) held its fourth anti-corruption summit to recommit the public sector, business and civil society to intensify collective action to fight corruption. Information relating to the Convention and related documents were distributed at the summit. For more information: [www.nacf.org.za](http://www.nacf.org.za)

#### *Cabinet approves additional funding to combat corruption*

Reported on 20 Feb 2012

Minister of Justice and Constitutional Development Jeff Radebe has announced that Cabinet has approved an additional R150 million for law enforcement agencies to fight fraud and corruption and the money will be transferred from the Criminal Assets Recovery Account to the Anti-Corruption Task Team. The additional funding came from monies that were confiscated from illicit activities and will be used to strengthen the capacity of law enforcement agencies to fight corruption.

Full report available at: [Business Live](#)".

#### *Establishment of a Commission to probe Strategic Defence Procurement Packages*

In October 2011, the President of the Republic of South Africa announced the establishment of an independent Commission of Inquiry to probe the allegations of fraud, corruption, impropriety or irregularity in the Strategic Defence Procurement Packages (SDPP) commonly referred to as the Arms Deal. The Minister of Justice and Constitutional Development announced during the same month the Terms of Reference for the Commission. The Commission will, among other things, inquire into, make findings, report on and make recommendations concerning the following:

- Whether any person/s, within and/or outside the Government of South Africa, improperly influenced the award or conclusion of any of the contracts awarded and concluded in the SDPP procurement process and, if so:
- Whether legal proceedings should be instituted against such persons, and the nature of such legal proceedings; and
- Whether, in particular, there is any basis to pursue such persons for the recovery of any losses that the State might have suffered as a result of their conduct.

- Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation.

The Commission is chaired by a judge of the Supreme Court of Appeal and members of the Commission are “senior judges of high standing and integrity, who have impeccable track records in the legal and judicial work” (Minister of Justice and Constitutional Development). The Commission started its work on 24 October 2012.

Media statement by the Minister of Justice and Constitutional Development is available at [http://www.justice.gov.za/m\\_statements/2011/20111027\\_armscomms.html](http://www.justice.gov.za/m_statements/2011/20111027_armscomms.html). The Commission’s Secretariat, can be reached at (012) 358 3999.

*Relevant Internet links to national implementing legislation*

The relevant internet link to obtain the wording of (any) national legislation (including national legislation to implement the OECD-Convention) is: [www.gov.za](http://www.gov.za)

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (June 2008)  
<http://www.oecd.org/dataoecd/51/30/40883135.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (June 2010)  
<http://www.oecd.org/dataoecd/8/39/45670609.pdf>

## SPAIN

*(Information as of 17 March 2011)*

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

On January 14, 2000, Spain ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997.

### ***Implementing legislation***

Anti-bribery rules were incorporated into Spanish Law by Organic Act 3/2000 of January 11, which amended the Penal Code Organic Act 10/1995 of November 23 on the fight against bribery of foreign public officials in international business transactions (published in Spain's State Official Journal number 10, of January 12).

Another amendment of the Penal Code by Organic Act 15/2003 of November 25, set out the crime of bribery of foreign public officials as a new Chapter X, added to Title XIX of Book II of the Penal Code, under the heading "corruption offences in international business transactions", and established a new Article 445, which completed the traditional bribery offence set forth by the article 423 of the Penal Code.

The most recent amendment of the Penal Code by Organic Act 5/2010 of June 22 adapts the Spanish criminal law to the OECD Convention. This Organic Act amending Penal Code came into force on December 23rd 2010. Therefore, the crime of bribery of a foreign public official will be set out as an autonomous crime through the new wording of the Article 445 and there is no need to refer to Articles 419 to 427 of the Penal Code (on national bribery) to determine the penalty, increasing penalties and extending the limitation period. Consequently, there should be no doubts that said crime is not within the competence of the Jury Court.

And in addition, this major legislative change that is the amendment of the Penal Code will explicitly criminalize capital laundering.

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

#### ***Relevant legislation:***

- a) In the last amendment of Penal Code by Organic Act 5/2010 of June 22, the criminal liability of legal person is expressly provided for some offences among which the crime of bribery of foreign public officials offence. Specifically, it is established in Article 445 paragraph 2 according to the provisions of Article 31 bis of the Spanish Penal Code.
- b) Mention should also be made to Act 19/2003, of July 4, on the legal treatment of foreign capital movements and economic transactions, as well as certain measures aimed at preventing capital laundering, which amends Act 19/1993, of December 28, concerning specific measures for preventing capital laundering. This Act has been amended by Act 36/2006, of November 29, on measures for preventing tax fraud.
5. Nevertheless, the most significant change in the AML/CFT (*Anti Money Laundering/ Counter Financing of Terrorism*) regime was the enactment of the Act 10/2010 on prevention of money laundering and terrorist financing, which entered into force on 30<sup>th</sup> April 2010 and which

transposes the European Directive 2005/60/EC (the Third Money Laundering Directive). As its name indicates, the law unifies the preventive systems for money laundering and terrorist financing, previously splitted under the AML law 19/1993 and the CFT law 12/2003. With the new regime, all the preventive requirements fall under the scope of the Act 10/2010, the compliance supervision being responsibility of the SEPBLAC (FIU) and sanctioning powers relying on the Ministry of Finance. The blocking and freezing of funds potentially linked to terrorism remains ruled by the Act 12/2003 under the authority of the Ministry of Home Affairs through the Commission on Terrorist Financing Monitoring.

- c) Also related are some Framework Decisions adopted by the European Union within the scope of the third pillar, related to police and judicial cooperation in criminal matters. Especially, the Framework Decision of July 22, 2003 to fight corruption in the private sector (OJ L 192 of 31.07.2003), includes a set of provisions intended to unify the legal and penal framework in the Member States in relation to active and passive corruption in the private sector, by establishing unified penal categories and penalty thresholds, while laying down rules on jurisdiction and setting forth the obligation to regulate the criminal responsibility of legal persons.

### ***Other information***

#### *Relevant authorities*

The key authority is the Special Prosecutor's Office for Corruption-Related Economic Offences, regulated by the Organic Statute of the Attorney General's Office approved by Act 50/1981 of December 30, and amended by Act 14/2003, of May 26, and by Act 24/2007, of October 6.

On 12 July 2006, Direction 4/2006 of Public Prosecutor General's Office came into force, and redefined the competences of Special Public Prosecutor's Office against Corruption.

#### *Relevant internet links to national implementing legislation*

The following are internet sites that provide information on the Spanish national law:

[www.igsap.map.es](http://www.igsap.map.es)

[www.boe.es](http://www.boe.es)

[www.mjusticia.es](http://www.mjusticia.es)

[www.fiscal.es](http://www.fiscal.es)

[www.sepblac.es](http://www.sepblac.es)

<http://juridicas.com>

#### *Signature/Ratification of other relevant international instruments*

- Spain ratified the UN Convention against Corruption on 19 June 2006;
- The Council of Europe has established a Group of States against Corruption, known as Greco, where Spain plays an active role and which has promoted several Conventions in this area. The most relevant are the Criminal Law Convention on Corruption of January 27, 1999 and the Civil Law Convention on Corruption of November 4, 1999. Spain signed both Conventions on 10 May 2005;
- Besides the above-mentioned Framework Decision, the European Union is making additional efforts related to these issues. The fight against corruption within the Community institutions led to the adoption of the Convention of July 26, 1995, to protect the European Communities'

financial interests, the Additional Protocol of September 21, 1996, dealing with the corruption of officials, and in particular the Council Act of May 26, 1997 approving the Convention to fight acts of corruption involving officials of the European Community or officials of the Member States of the European Union.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (March 2000)  
<http://www.oecd.org/dataoecd/15/60/2389614.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2006)  
<http://www.oecd.org/dataoecd/28/35/36392481.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Revised Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions (September 2008)  
<http://oecd.org/dataoecd/8/38/41590651.pdf>



## SWEDEN

*(Information as of 4 October 2012)*

### ***Date of deposit of instrument***

The instrument of ratification was deposited with the OECD Secretary-General on 8 June 1999.

### ***Implementing legislation***

The bill with the necessary amendments of Swedish legislation, in order to enable Sweden to ratify and implement the Convention, was passed by Parliament on 25 March 1999 (bill 1998/99:32). The implementing legislation entered into force on 1 July 1999. Relevant text is found in the Penal Code, Chapter 10 Section 5 – 5 a. The latest change took effect as of 1 July 2012, when giving a bribe and taking a bribe was moved to the same chapter in the Penal Code. Negligent financing of bribery, trading in influence and bribery in relating to contents open for public betting was also criminalised.

A company can be ordered to pay a corporate fine pursuant to Chapter 36, Section 7 of the Penal Code. Such fines can then be imposed in the span of SEK 5 000 to SEK 10 000 000.

1999:1078 The Accountant Act

1999:1229 Income Tax Law (*Inkomstskattelagen*)

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- International Legal Assistance in Criminal Matters Act (2000:562).
- Act (2005:500) on Recognition and Execution of European Union Freezing Decisions. 1959:254 The Act on Extradition of Offenders to Denmark, Finland, Iceland and Norway (*Lag om utlämning för brott till Danmark, Finland, Island och Norge*).
- Act (2003:1174) on Joint Investigation Teams for Criminal Investigations.
- The Extradition for Criminal Offences Act (1957:668).
- Act (1959:254) on Extradition of Offenders to Denmark, Finland, Iceland and Norway.
- Act (2003:1156) on Surrender from Sweden according to the European Arrest Warrant.

### ***Other information***

#### ***Review of legislation***

“In March 2009, the Swedish Government established a Commission of Inquiry to review the bribery offences in the Penal Code. The Commission issued a report that recommended substantial amendments to the Penal Code provisions on bribery, including the bribery of foreign public officials. Proposals were also put forward for criminal provisions on trading in influence and negligent financing of bribery, respectively. A Government Bill based on the proposals in the report was presented to Parliament on 15 March 2012. Parliament passed the Bill on 23 May. The new law entered into force on 1 July 2012. The aim of the new

legislation is to achieve more modern, more efficient and more easily accessible regulations on bribery with clear criteria for criminal liability”.

#### *Relevant authorities*

- National Anti-Corruption Unit (phone +46 10 562 50 00)
- Swedish Economic Crime Authority (phone +46 10 562 90 00)
- National Bureau of Investigation, Anti-Corruption team (phone +46 10 563 66 60)
- Swedish Competition Authority (responsible for Public Procurement since 1 September 2007) (phone +46 8 700 1600)
- National Tax Agency (phone +46 8 564 851 60)
- Division for Criminal Cases and International Judicial Cooperation, Ministry of Justice (phone +46 8 405 4500)
- National Bureau of Investigation, Anti-Corruption team (phone +46 10 563 66 60)

#### *Relevant internet links to national implementing legislation*

[www.sweden.gov.se/sb/d/3288/a/19568](http://www.sweden.gov.se/sb/d/3288/a/19568) (legislation in English)

[www.sweden.gov.se/centralauthority](http://www.sweden.gov.se/centralauthority)

#### *Ratification of other relevant international instruments*

- Council of Europe’s Criminal Law and Civil Law Conventions against Corruption
- The UN Convention against Corruption
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- The EU Convention on the Protection of the European Communities’ financial interests (PIF-Convention) and its first protocol
- The second protocol to the PIF-Convention
- The EU Convention on the fight against corruption involving officials of the European Communities or officials of the EU Member States

#### *Working Group on Bribery Monitoring Reports*

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (October 1999)

<http://www.oecd.org/dataoecd/16/1/2389830.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (September 2005)

<http://www.oecd.org/dataoecd/20/8/35394676.pdf>

Phase 2: Follow-up Report on the implementation of the Phase 2 Recommendations (October 2007)

<http://www.oecd.org/dataoecd/3/43/39905457.pdf>

Phase 3: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (September 2012)

<http://www.oecd.org/daf/briberyininternationalbusiness/50640024.pdf>

### ***Report on on-going or decided cases and MLA***

#### ***Judicial decisions***

Two Swedish consultants have been convicted to one and a half and one year of prison respectively for having bribed officials at the World Bank. The bribed officials handled a trust fund for the purpose of promoting Swedish companies being awarded contracts by the bank. The fund was financed by the Swedish development aid authority, Sida. The Swedish District Court's decision was appealed. The Court of Appeal has confirmed the decision of the District Court.

## SWITZERLAND

(Information as of 3 October 2012)

### *Date of deposit of instrument of ratification/acceptance or date of accession*

Deposit of instrument of ratification: 31 May 2000.

### *Implementing legislation*

Swiss Criminal Code of 1937 (CC, RS 311.0; Articles 322ter - 322octies including art. 322septies CC Bribery of foreign public officials and Articles 102 CC and 112 Swiss Criminal Procedure Code (CPC, RS 312.0) Corporate Criminal Liability.

<http://www.admin.ch/ch/e/rs/3/311.0.en.pdf>

<http://www.admin.ch/ch/e/rs/3/312.0.en.pdf>

### *Other relevant legislation, amendments*

Swiss Criminal Code:

- Amendment of 22 December 1999 (Book 3, Title 3: Federal jurisdiction and cantonal jurisdiction; Article 337: Federal jurisdiction regarding organised crime, financing of terrorism and economic crime; RO 2001 3071); entered into force on 1 January 2002. NB: Former Article 337 CC has been replaced by article 24 CPC, entered into force on 1 January 2011.
- Amendment of 21 March 2003 (Book 1, Title 6: Corporate Criminal Liability; Articles 102 - 102a; RO 2003 3043); entered into force on 1 October 2003. NB: Former Article 102a CC (procedure) has been replaced by Article 112 CPC, entered into force on 1 January 2011.

Other legislation:

- Amendment of 7 October 2005 (Book 2, Title 19: Corruption; Article 322<sup>septies</sup>; Addition of passive bribery of foreign public officials; RO 2006 2371); entered into force on 1 July 2006.
- Swiss Federal Act on the prohibition of tax-deductibility of hidden commissions of 22 December 1999 (RO 2000 2147); entered into force on 1 January 2001.
- Swiss Federal Act on the Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (RIAA) governs the freezing, forfeiture and restitution of the assets of politically exposed persons (PEPs) or their close associates in cases where a request for mutual assistance in criminal matters cannot succeed due to the failure of the judicial system in the requesting state; entered into force on 1 February 2011.
- Article 22a of the Federal Personnel Act regulates the duty to report, the right to report and the protection of the Federal employee reporting in good faith crimes and offences or other irregularities which he/she became aware of in the course of official work activities ("whistleblowing"); entered into force on 1 January 2011.
- Swiss Code on Criminal Procedure; it entered into force on 1 January 2011 and replaces Switzerland's 26 cantonal codes of criminal procedure, as well as the corresponding regulations at

federal level. As a result, all criminal offences as defined in the Swiss Criminal Code will be prosecuted and judged according to the same procedural rules.

### ***Other information***

#### *Relevant authorities*

State Secretariat for Economic Affairs (SECO)

International Investments and Multinational Enterprises Unit  
Effingerstrasse 1/ CH-3003 Berne  
Tel. + 41 (0)31 323 12 75 / Fax + 41 (0)31 325 73 76  
AFIN@seco.admin.ch  
<http://www.seco.admin.ch/themen/00645/00657/index.html?lang=fr>

Federal Office of Justice (OFJ)

Service for International Criminal Law  
Bundesrain 20 / CH - 3003 Berne  
Tel. + 41 (0)31 322 41 16 / Fax + 41 (0)31 312 14 07  
[info@bj.admin.ch](mailto:info@bj.admin.ch)  
[http://www.ejpd.admin.ch/ejpd/fr/home/themen/kriminalitaet/ref\\_korruption\\_greco.html](http://www.ejpd.admin.ch/ejpd/fr/home/themen/kriminalitaet/ref_korruption_greco.html)

Federal Department of Foreign Affairs (DFA)

Coordination of Sectoral Policies  
Bundesgasse 28 / CH – 3003 Berne  
Tel. + 41 (0)31 324 99 84 / Fax + 41 (0)31 324 90 72  
[PA5-finanz-wirtschaft@eda.admin.ch](mailto:PA5-finanz-wirtschaft@eda.admin.ch)  
<http://www.eda.admin.ch/eda/fr/home/topics/finec/inter/corrupt.html>

Federal Office of Police (fedpol)

Nussbaumstrasse 29 / CH-3003 Berne  
Tel. +41 (0)31 323 11 23, Fax +41 (0)31 322 53 04  
<http://www.fedpol.admin.ch/fedpol/fr/home.html>

Office of the Attorney General of Switzerland

Taubenstrasse 16, CH-3003 Berne  
Tel. +41 (0)31 322 45 79 / fax +41 (0)31 322 45 07  
[info@ba.admin.ch](mailto:info@ba.admin.ch)  
<http://www.ba.admin.ch/ba/fr/home.html>

#### *Relevant Internet links to national implementing legislation*

Articles 322<sup>ter</sup> - 322<sup>octies</sup> CC (“Provisions on corruption”):  
[http://www.admin.ch/ch/f/rs/311\\_0/index2.html](http://www.admin.ch/ch/f/rs/311_0/index2.html)

Articles 102 CC and 112 CPC (“Provisions on corporate liability”):  
[http://www.admin.ch/ch/f/rs/311\\_0/index1.html](http://www.admin.ch/ch/f/rs/311_0/index1.html)  
[http://www.admin.ch/ch/e/rs/312\\_0/a112.html](http://www.admin.ch/ch/e/rs/312_0/a112.html)

Article 24 CPC (“Provision on federal jurisdiction regarding organised crime, the financing of terrorism and economic crime”):

[http://www.admin.ch/ch/e/rs/312\\_0/a24.html](http://www.admin.ch/ch/e/rs/312_0/a24.html)

### *Brochure*

In 2008, the Swiss State Secretariat for Economic Affairs (SECO), in collaboration with the Federal Office of Justice, the Federal Department of Foreign Affairs, the Swiss Business Federation (economiesuisse) and Transparency International Switzerland, published a second revised edition (first edition 2003) of a booklet aimed at Swiss businesses operating abroad - especially SMEs - and offering advice on preventing corruption, as well as information on relevant legal provisions and competent authorities.

In English:

<http://www.seco.admin.ch/dokumentation/publikation/00035/00038/01711/index.html?lang=en>

In French:

<http://www.seco.admin.ch/dokumentation/publikation/00035/00038/01711/index.html?lang=fr>

### *Signature/Ratification of other relevant international instruments*

Switzerland has ratified the Council of Europe’s Criminal Law Convention on Corruption on 31 March 2006 and has acceded to GRECO on July 1, 2006. The United Nations Convention against Corruption was signed on 10 December 2003, and ratified on 24 September 2009.

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of implementation of the Convention and 1997 Recommendation (February 2000)

[www.oecd.org/dataoecd/16/47/2390244.pdf](http://www.oecd.org/dataoecd/16/47/2390244.pdf)

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (February 2005)

<http://www.oecd.org/dataoecd/43/16/34350161.pdf>

Phase 2: Follow-up Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (may 2007)

<http://www.oecd.org/dataoecd/7/60/38898790.pdf>

On the occasion of the publication of the Phase 2 Monitoring Report in February 2005, a media conference was held in Berne. In addition to the Report, a press release and several explanatory documents were published on the State Secretariat for Economic Affairs’ website.

In French:

<http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=fr&msg-id=10409>

Phase 3: Report on the Implementation and Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Transactions (December 2011)

<http://www.oecd.org/dataoecd/59/53/49377354.pdf>

At the date of publication of the Phase 3 Report in January 2012, Switzerland issued a press release which can be found on the State Secretariat for Economic Affairs' website.

<http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=en&msg-id=42981>

## **TURKEY**

*(Information as of 1 June 2006)*

### ***Date of Deposit of Instrument of Ratification***

26.07.2000

### ***Implementing Legislation***

#### ***Identification of the Law***

**Name:** Act on Amendment of Turkish Penal Code

**Number:** 5377

**Description:** Act numbered 5377 and dated 29/06/2005, amending the Turkish Penal Code, numbered 5237 came into force on 1 June 2005 which stipulates bribery of foreign public officials in Article 252/5. This new amended provision replaces the previous Act numbered 4782 and dated 02/01/2003.

#### ***Adoption and Entry into Force***

Date of Adoption: 29.06.2005

Date of Entry into Force: 08.07.2005

### ***Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- “New Turkish Penal Code”
- “Public Procurement Act”
- “The Act on Prevention of Money Laundering”
- “The Act on Civil Servants”
- “The Act on Declaration of Properties, Combating Bribery and Corruption”
- “The Act on the Right to Access to Information”
- “The Act on Combating Organizations Pursuing Illicit Gain”

### ***Other Information***

#### ***Relevant Authority***

Public Prosecutor is the authority to whom report information on bribery offence.

Other Relevant Authorities: Ministry of Justice

#### ***Internet Link***

<http://www.adalet.gov.tr>



*Relevant International Instruments:*

- “United Nations Convention against Corruption”: Date of Signature: 10 December 2003. Approval by the Turkish Grand National Assembly: 18.05.2006.
- The United Nations Convention against Transnational Organized Crime”: Approval by the Turkish Grand National Assembly: 30.01.2003.
  - “Council of Europe’s Civil Law Convention”: Approval by the Turkish Grand National Assembly: 17.04.2003.
  - “Council of Europe’s Criminal Law Convention on Corruption”: Approval by the Turkish Grand National Assembly: 14.01.2004.
  - “The Council of Europe’s Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime”: Approval by the Turkish Grand National Assembly: 16.06.2004.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of implementation of the Convention and 1997 Recommendation (November 2004)  
<http://www.oecd.org/dataoecd/17/6/33967367.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (December 2007)  
<http://oecd.org/dataoecd/13/46/39862163.pdf>

Phase 2bis: (May 2007) <http://oecd.org/dataoecd/2/18/43198860.pdf>

## UNITED KINGDOM

(Information as of 24 February 2012)

### *Date of deposit of instrument of ratification/acceptance or date of accession*

The United Kingdom signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“the OECD Convention”) on December 17 1997, and deposited its instrument of ratification on 14 December 1998. The UK’s ratification was extended to the Isle of Man in 2001 and to the Cayman Islands, Jersey and Guernsey in early 2010.

### *Implementing legislation*

#### *Bribery Act 2010*

Legislation to reform the criminal law of bribery received Royal Assent on 8 April 2010. The [Bribery Act 2010](#) came into force on 1 July 2011.

[http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100023\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1)

The Secretary of State has issued guidance on what commercial organisations can do to prevent persons associated with them from bribing.

<http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>

**The Director of Public Prosecutions (DPP) Keir Starmer QC, and the Director of the Serious Fraud Office (SFO), Richard Alderman, have issued joint guidance for prosecutors on the Bribery Act 2010.**

<http://www.sfo.gov.uk/media/167348/bribery%20act%20joint%20prosecution%20guidance.pdf>

### *Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations*

The UK has prosecuted the crime of bribery under the common law (unwritten) for many centuries but the crime of corruption only entered statute law (written) with the Public Bodies Corrupt Practices Act 1889, which outlawed bribery of public officials.

The Prevention of Corruption Act 1906 extended bribery into the private sector and introduced the concept of bribing agents acting on behalf of a principal.

The Prevention of Corruption Act 1916 Act widened the definition of ‘public body’ and added a presumption of corruption for all payments made in connection with contracts to Crown employees or government departments.

The Anti-Terrorism, Crime and Security Act 2001 received Royal Assent on 14 December 2001. Part 12 of the Act, which came into force on 14 February 2002, expressly extended the jurisdiction of domestic courts to bribery committed abroad by UK nationals or bodies incorporated under UK law, and widened the definition of public bodies to encompass foreign public bodies. Before the Anti-Terrorism, Crime and Security Act 2001 if the substance of the offence was committed in the UK it would be prosecutable.

## *Anti-terrorism, Crime and Security Act 2001*

[http://www.opsi.gov.uk/acts/acts2001/ukpga\\_20010024\\_en\\_1](http://www.opsi.gov.uk/acts/acts2001/ukpga_20010024_en_1)

### *Explanatory Notes*

[http://www.opsi.gov.uk/acts/acts2001/en/ukpgaen\\_20010024\\_en\\_1](http://www.opsi.gov.uk/acts/acts2001/en/ukpgaen_20010024_en_1)

Section 59 of the Criminal Justice and Immigration Act 2008 extends SFO powers to compel the production of documents at the earlier vetting stage of foreign bribery cases. These pre-investigation powers facilitate the collecting of relevant evidence at a much earlier stage and therefore enable swifter, more proactive investigatory action against well-founded cases. These new powers came into force in July 2008, and were first used in October 2008.

[http://www.opsi.gov.uk/acts/acts2008/ukpga\\_20080004\\_en\\_1](http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_1)

### *Law Reform*

In March 2007, the Government asked the Law Commission to undertake a priority fundamental review of the law on bribery. The Law Commission's consultation exercise closed in March 2008. The Law Commission issued their report on 20 November 2008.

<http://www.lawcom.gov.uk/bribery.htm>

The Government announced in May 2008 its Draft Legislative Programme for 2008/09. The Leader of the House's summary of the draft Bill coincided with the Queen's Speech and the Law Commission report.

The draft bill was published on 25 March 2009 and was subject to pre-legislative scrutiny by the UK Parliament. Parliament established a Joint Committee of both Houses of Parliament on 28 April 2009 and began to take evidence in May.

<http://webarchive.nationalarchives.gov.uk/20090503211924/http://www.justice.gov.uk/publications/draft-bribery-bill.htm>

The Committee's report was published on 28 July 2009.

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/115i.pdf>

### ***Other information***

#### *Relevant authorities*

Department for Business, Innovation & Skills,  
1 Victoria Street  
London  
SW1H 0ET  
Tel: 0207 215 3010

#### *Signature/Ratification of other relevant international instruments*

The United Kingdom has signed the Council of Europe Criminal Law Convention on Corruption and joined GRECO.

[http://www.coe.int/t/dghl/monitoring/greco/general/about\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/general/about_en.asp)

The United Kingdom signed the United Nations Convention against Corruption (UNCAC) on 9 December 2003 and ratified UNCAC on 14 February 2006. UK law became fully compliant with the convention when the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 came into force on the 31 December 2005, and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 came into effect on 1 January 2006.

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (December 1999):

<http://www.oecd.org/dataoecd/8/24/2754266.pdf>

Phase 1bis. (March 2003): <http://www.oecd.org/dataoecd/12/50/2498215.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2005).

<http://www.oecd.org/dataoecd/62/32/34599062.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions July 2007).

<http://www.oecd.org/dataoecd/43/13/38962457.pdf>

Phase 2bis. (October 2008) <http://www.oecd.org/dataoecd/23/20/41515077.pdf>

Phase 1ter. (December 2010) <http://www.oecd.org/dataoecd/58/43/46883138.pdf>

### ***Judicial decisions (and enforcement actions)***

#### **Action on Macmillan Publishers Limited**

The Director of the Serious Fraud Office (SFO) took action in the High Court, which resulted in an Order for the company, Macmillan Publishers Limited (MPL), to pay in excess of £11 million in recognition of sums it received which were generated through unlawful conduct related to its Education Division in East and West Africa.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/action-on-macmillan-publishers-limited.aspx>

<http://www.cityoflondon.police.uk/CityPolice/Media/News/290711OACUcaseendwith%C2%A311mpayout.htm>

**FSA fines Willis Limited £6.895 million for anti-bribery and corruption systems and controls failings**

The Financial Services Authority (FSA) fined Willis Limited £6.895 million for failings in its anti-bribery and corruption systems and controls. These failings created an unacceptable risk that payments made by Willis Limited to overseas third parties could be used for corrupt purposes.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml>

#### DePuy International Limited ordered to pay £4.829 million in Civil Recovery Order

In April 2011 the SFO obtained a Civil Recovery Order against DePuy International Limited. The company was ordered to pay £4.829 million, plus prosecution costs, in recognition of unlawful conduct relating to the sale of orthopaedic products in Greece between 1998 and 2006.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/depuy-international-limited-ordered-to-pay-4829-million-pounds-in-civil-recovery-order.aspx>

#### MW Kellogg Ltd to pay £7 million in SFO High Court action

Although M.W. Kellogg Limited (MWKL) took no part in the criminal activity which generated share dividends payable from profits and revenues produced by contracts obtained by bribery and corruption, the High Court made an Order under the Proceeds of Crime Act 2002 on 16 February 2011 which will lead to the payment of £7,028,077 in full and final settlement of the case.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mw-kellogg-ltd-to-pay-7-million-pounds-in-sfo-high-court-action.aspx>

#### BAE System plc

**In December 2010 BAE Systems Plc was fined £500,000 after admitting it had failed to keep adequate accounting records in relation to a defence contract for the supply of an air traffic control system to the Government of Tanzania.**

This follows a settlement by BAE as part of a global agreement it reached with the Serious Fraud Office and the US Department of Justice concerning contracts in a number of countries. The settlement with the SFO relates to the Tanzania contract whereby BAE agreed to pay an ex-gratia payment for the benefit of the people of Tanzania of £30 million less any fine imposed by the Crown Court.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-systems-plc.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>

#### Julian Messent

A former director of London-based insurance business PWS International Ltd -Julian Messent-pleaded guilty to two counts of making corrupt payments between February 1999 and June 2002, contrary to s1 (1) of the Prevention of Corruption Act 1906. He was sentenced to 21 months imprisonment on each count to run concurrently. He was ordered to pay £100,000 compensation within 28 days to the Republic of Costa Rica or serve an additional 12 months imprisonment if he fails to do so. He was disqualified from being a company director for a period of five years. The sentencing judge made it clear that Messent's guilty plea, cooperation with the SFO and the mitigation offered had allowed him to reduce the sentence from an initial starting point of four to five years to the 21 months.

Messent admitted making or authorising corrupt payments of almost US \$2 million to Costa Rican officials in the state insurance company, Instituto Nacional de Seguros (INS) and the national electricity

and telecommunications provider Instituto Costarricense de Electricidad (ICE). He also asked for 39 similar offences to be taken into consideration.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/insurance-broker-jailed-for-bribing-costa-rican-officials.aspx>

#### Robert John Dougall

Former DePuy executive Robert John Dougall pleaded guilty after admitting his involvement in making £4.5 million of corrupt payments to medical professionals within the Greek state healthcare system. He was originally sentenced to 12 months imprisonment. Recognising the important public interest issues raised in this case, Mr. Dougall was granted leave to appeal. On appeal the sentence was suspended. The Court of Appeal emphasised that where a defendant entered a guilty plea and provided full co-operation with the authorities investigating a major crime involving fraud or corruption and the level of criminality and mitigation meant that the sentence of imprisonment would be 12 months or less, then “the argument that the sentence should be suspended is very powerful” and that “this result will normally follow”.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/british-executive-jailed-for-part-in-greek-healthcare-corruption.aspx>

#### Innospec Ltd

In March 2010, Innospec Ltd appeared at Southwark Crown Court and entered a plea of guilty to bribing employees of Pertamina (an Indonesian state owned refinery) and other government officials in Indonesia. The judge indicated he would impose a fine of the sterling equivalent of US\$ 12.7 million.

**In January 2012 Dr David Turner the former Innospec Limited Global Sales and Marketing Director (Tetraethyl Lead), appeared at Southwark Crown Court and pleaded guilty to three counts of conspiracy to corrupt.**

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-judgment.aspx>

<http://www.judiciary.gov.uk/NR/rdonlyres/5343F038-A6E5-448B-BB2D-7CA31F9E2DDA/0/sentencingremarksthomastjinnospec.pdf>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd-former-director-pleads-guilty-to-corruption.aspx>

#### Mabey & Johnson

In July 2009, bridge builders Mabey and Johnson entered guilty pleas to charges of corruption and breaching UN sanctions. On 25 September 2009, the company agreed to pay £6.6 million in fines, confiscation and reparation orders. A monitor was appointed for up to three years to ensure future compliance.

In January 2012 the Director of the Serious Fraud Office (SFO) took action in the High Court, which resulted in an Order for Mabey Engineering (Holdings) Ltd, to pay over £130,000 in recognition of sums it received through share dividends derived from contracts won through unlawful conduct. Mabey

Engineering (Holdings) Ltd is the parent company of modular bridge manufacturers Mabey and Johnson Ltd and part of the Mabey Holdings group.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/mabey--johnson-ltd-prosecuted-by-the-sfo.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/mabey--johnson-ltd-sentencing-.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mabey--johnson-ltd-former-executives-jailed-for-helping-finance-saddam-hussein's-government.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mabey--johnson-directors-made-illegal-payments-to-sadam-hussein's-iraq-to-gain-contract.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/shareholder-agrees-civil-recovery-by-sfo-in-mabey--johnson.aspx>

#### FSA fines Aon

In January 2009 the Financial Services Authority fined the company £5.25 million for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml>

#### Balfour Beatty plc

In October 2008 the Serious Fraud Office used new Civil Recovery powers against a UK plc to recover property obtained by unlawful conduct. A Consent Order agreed before the High Court established a settlement of £2.25 million plus costs.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2008/balfour-beatty-plc.aspx>

#### City of London Police - Guilty plea to bribery sets legal landmark

The first UK prosecution of a foreign bribery offence was heard in August 2008. The Managing Director of a UK-based company was found guilty of making corrupt payments to foreign officials. A Ugandan Government official who received the payment was arrested in London and also convicted.

<http://www.cityoflondon.police.uk/CityPolice/Departments/ECD/anticorruptionunit/guiltypleatobribery.htm>

<http://www.publications.parliament.uk/pa/jt200809/jtselect/jtbribe/115/115i.pdf>

**UNITED STATES**  
*(Information as of 4 October 2012)*

***Date of deposit of instrument of ratification/acceptance or date of accession***

Deposit of instrument of ratification/acceptance: December 8, 1998

Entry into force of the Convention: February 15, 1999

Entry into force of implementing legislation: November 10, 1998

***Implementing legislation***

Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.

***Other relevant laws, regulations, or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- The Civil Asset Forfeiture Reform Act (CAFRA) of 2000 made it possible to seek civil and criminal forfeiture of the proceeds of foreign bribery.
- The President signed an executive order in March 2002 designating the European Union's organizations and Europol as public international organizations, making bribery of officials from these organizations a violation of the FCPA.
- The U.S. Sentencing Commission promulgated amendments, effective November 2002, making violations of the FCPA and violations of the domestic bribery law subject to the same sentencing guidelines.
- The Sarbanes-Oxley Act of 2002 made violations of foreign bribery laws as predicate offences under the Money Laundering Control Act, 18 U.S.C. § 1956, required internal reporting systems at public companies, and created whistleblower protections for employees of public companies who provide evidence of fraud.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 enhanced whistleblower protections and authorized the U.S. Securities and Exchange Commission (SEC) to pay rewards to whistleblowers who provide the SEC with original information that leads to successful SEC enforcement actions and certain related actions.

***Other information***

***Relevant enforcement authorities***

U.S. Department of Justice  
Criminal Division, Fraud Section  
Bond Building, Suite 4100  
1400 New York Avenue, NW  
Washington, D.C. 20530  
Tel: 202-514-7023  
Fax: 202-514-7021



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*Relevant Internet links to national implementing legislation:*

[www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html](http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html) (FCPA in English and numerous other languages)

*Ratification of other relevant international instruments*

The United States has also ratified the United Nations Convention Against Corruption and the Inter-American Convention against Corruption, as well as the Agreement establishing the Group of States against Corruption (GRECO).

### ***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation  
<http://www.oecd.org/dataoecd/16/50/2390377.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions  
<http://www.oecd.org/dataoecd/52/19/1962084.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions  
<http://www.oecd.org/dataoecd/7/35/35109576.pdf>

Phase 3: Report on the Implementation Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions  
<http://www.oecd.org/dataoecd/7/35/35109576.pdf>

### ***Judicial Decisions (Subsequent to the Phase 3 Review)***

*“Foreign Official” Challenges (United States v. Carson et al., No. 8:09cr77 (C.D. Cal. May 18, 2011); United States v. Aguilar et al., 2011 U.S. Dist. LEXIS 43895 (C.D. Cal. April 20, 2011); United States v. Esquenazi, et al., No. 1:09-21010 (S.D. Fla. November 19, 2010)*<sup>13</sup>: Three courts issued opinions over the course of six months as to whether

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<sup>13</sup> The opinions of District Court judges, while persuasive authority, are not binding on any court.

employees of state-owned and state-controlled enterprises are properly considered “foreign officials” under the FCPA.<sup>14</sup> The FCPA defines “foreign official” as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof....” The three challenges focused on whether state-owned and –controlled enterprises qualify as “agencies or instrumentalities” of a foreign government. In all three opinions, the Courts ruled that a plain reading of the statute show that state-owned and –controlled enterprises could<sup>15</sup> be agencies or instrumentalities under the FCPA. <sup>16</sup> In *Carson*, the Court also agreed that the statute is clear, and provided a non-exhaustive list of factors that should be considered in determining whether or not an entity is an “agency” or “instrumentality”:

Several factors bear on the question of whether a business entity constitutes a government instrumentality, including:

- The foreign state’s characterization of the entity and its employees;
- The foreign state’s degree of control over the entity;
- The purpose of the entity’s activities;
- The entity’s obligations and privileges under the foreign state’s law, including whether the entity exercises exclusive or controlling power to administer its designated functions;
- The circumstances surrounding the entity’s creation; and
- The foreign state’s extent of ownership of the entity, including the level of financial support by the state (e.g., subsidies, special tax treatment, and loans).

Such factors are not exclusive, and no single factor is dispositive. As applicable here, their chief utility is simply to point out that several types of

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<sup>14</sup> There was also a challenge to the definition of “foreign official” in the *Nexus Technologies* matter, described in the U.S. response to the Phase 3 Report. The judge ruled in favor of the United States, but issued no written opinion.

<sup>15</sup> Because the three challenges were filed pre-trial, if there was a disagreement as to the facts, the court could not definitively rule on whether the enterprises at issue were agencies or instrumentalities. In *Carson* and *Esquenazi*, the United States will have to prove facts sufficient to establish the state ownership or control of the relevant entities. In *Aguilar*, there were no outstanding issues of fact, and thus the Court’s opinion states definitively that the entity at issue, the state-owned electricity company of Mexico, is an instrumentality of the Government of Mexico.

<sup>16</sup> The *Aguilar* Court notably also held that the FCPA should be read to conform to the OECD Convention, pursuant to a doctrine of statutory construction that requires that, where fairly possible, a U.S. statute should be read to conform with international obligations:

When Congress amended the FCPA in 1998, it meant “to conform it to the requirements of and to implement the OECD Convention.” S. Rep. No. 105-2177 (1998) at 2. In so doing, the *only* change Congress made to the FCPA’s definition of “foreign official” was to add officials of public international organizations. According to the Government, if the FCPA is to be construed [\*24] consistent with the OECD Convention, then the FCPA’s definition of “foreign official” should be understood to *include* “any person . . . exercising a public function for a foreign country, including for a public agency or public enterprise . . . .” Thus, high-ranking employees of certain state-owned corporations could fall within the scope of the FCPA.

*Aguilar* at 24 (emphasis in original).

evidence are relevant when determining whether a state-owned company constitutes an “instrumentality” under the FCPA — with state ownership being only one of several considerations.

*Carson* at 5.

The *Esquenazi* decision is currently on appeal to the Eleventh Circuit Court of Appeals.

***Opinions<sup>17</sup> Issued by the Department of Justice (Subsequent to the Phase 3 Review)***

*Opinion Procedure Release No. 10-02:* In July 2010, the Department of Justice issued an Opinion Procedure Release in response to an inquiry from a non-profit, U.S.-based microfinance institution. The institution’s Eurasian subsidiary sought to obtain a license to operate as a financial institution. As a condition to granting such license, the Eurasian country’s Regulating Agency required the subsidiary make a grant to a local microfinance institution in the country. The question presented was whether the proposed grant would be appropriate under the FCPA considering that one board member of the local microfinance institution was a sitting government official, despite a law in this country barring government officials from receiving compensation for this type of board service. The Department determined that the subsidiary did appropriate due diligence and the controls it planned to institute were sufficient to prevent FCPA violations and indicated that it did not intend to take enforcement action.

*Opinion Procedure Release No. 10-03:* In September 2010, the Department of Justice issued an Opinion Procedure Release in response to an inquiry from a U.S. limited partnership. The partnership sought to contract with a consultant, who previously and currently holds contracts to represent a foreign government and act on its behalf. In light of the steps taken to wall off the employees working on the various representations from each other, the full disclosure of the relationships to the relevant parties, and the permissibility of the relationships under local law, the Department determined that the consultant was not a foreign official as defined by the FCPA. However, the Department noted that its opinion was limited to the holding on these narrow grounds, and expressed that the proposed relationship increased the risk of potential FCPA violations. The opinion did not foreclose the Department from taking enforcement action should an FCPA violation arise out of the consultancy.

*Opinion Procedure Release No. 11-01:* In June 2011, the Department of Justice issued an opinion in response to an adoption service provider in the United States, declining to take

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<sup>17</sup> Pursuant to the Department of Justice FCPA Opinion Procedure, 28 C.F.R. part 80, the Department provides guidance as to whether a specific, non-hypothetical, prospective transaction would violate the FCPA. If the Department affirms it will not take enforcement action based upon the requestor’s description of the transaction, and the transaction thereafter takes place exactly as described, the requestor qualifies for a “safe harbor” and may not be prosecuted. Although the Department’s Opinions are non-binding on other federal agencies, the SEC has stated that, as a matter of its prosecutorial discretion, it will not take enforcement action against an issuer with respect to a transaction concerning which the Department has rendered a favorable opinion. *See* SEC Interpretative Release No. 34-17099 (Aug. 28, 1980).

enforcement action if the company proceeded with sponsoring expenses for two foreign officials to travel to the United States for a two-day visit. The adoption service provider represented that the purpose of the visit would be to familiarize the officials with the nature and extent of the company's business operations; that it would not select the delegates; it would pay all costs directly to providers; and it does not currently non-routine matters before the sponsored officials.

*Opinion Procedure Release No. 12-01:* In September 2012, the Department of Justice issued an opinion in response to a lobbying firm in the United States, declining to take enforcement action if the company proceeded with retaining a consulting company, one of whose principals was a member of a Foreign Country's Royal Family. The U.S. lobbying firm ultimately wished to obtain a contract from the Foreign Country's Foreign Ministry and represented that it believed that the consulting company could assist it in obtaining and executing such a contract. The Requestor asked for an opinion as to whether the Department viewed the Royal Family Member as a "foreign official" under the FCPA and whether the Department planned to take enforcement action should it retain the consulting company. The Department concluded that a member of a royal family member is not *per se* a "foreign official" for purposes of the FCPA. Instead, the Department explained that whether a member of a royal family is a "foreign official" turns on such factors as (i) how much control or influence the individual has over the levers of governmental power, execution, administration, finances, and the like; (ii) whether a foreign government characterizes the individual as having governmental power; and (iii) whether and under what circumstances the individual may act on behalf of, or bind, the foreign government. The Department noted additional non-exclusive factors that should be considered in making the "foreign official" determination, such as the royal family's current and historical legal status and powers and the likelihood that the individual royal family member could ascend to a governmental position. After considering these factors and the factual representations made by the Requestor, the Department concluded that this particular Royal Family Member was not a "foreign official" within the meaning of the FCPA. This individual had no official or unofficial title or role in the Foreign Country's government, no official or unofficial power over any aspect of the Foreign Country's governmental processes, and no direct or indirect power to award governmental business. Furthermore, this individual could not ascend to a governmental position or claim any benefits or privileges based on Royal Family membership alone, nor did the individual have any personal, professional, or familial relationships with the officials who could award the Foreign Ministry's business to the lobbying firm. The Department further noted that there was no indication that retaining the consulting company would corruptly influence any decision by the Foreign Country's officials. Accordingly, the Department stated that it would not take enforcement action as to the consulting contract.

### ***Enforcement Resources***

Pursuant to the U.S. Attorney's Manual (USAM) 9-47.110, criminal violations of the Foreign Corrupt Practices Act are prosecuted only by the Fraud Section of the Criminal Division of the Department of Justice. In 2006, the Fraud Section formed a dedicated FCPA Unit within the Fraud Section to handle prosecutions, issue opinion releases, participate in interagency anticorruption policy development, work with foreign law

enforcement and international organizations, participate in monitoring mechanisms, and to engage in public education about the FCPA and OECD Anti-Bribery Convention. The Unit consists of a Deputy Chief, four Assistant Chiefs, and a number of trial attorneys. Since the establishment of the Unit, prosecutions have increased significantly.

In May 2008, the Department of Justice Criminal Division announced its International Anticorruption Strategic Implementation Plan, focused on supporting anticorruption efforts around the world as an important component of the Criminal Division's overall mission. The Plan sets forth specific strategic objectives and implementation goals to coordinate the cross-cutting anticorruption efforts of the Office of International Affairs (OIA), the Fraud Section, Public Integrity Section (which handles domestic corruption), and Asset Forfeiture and Money Laundering Section (AFMLS), as well as the Office of Overseas Prosecutorial Development and the International Criminal Investigative Training Program.

The International Corruption Unit (ICU) of the Federal Bureau of Investigation (FBI) was created in 2008 to oversee the increasing number of corruption and fraud investigations emanating overseas, which required extensive international coordination and increased collaboration between FBI Headquarters (FBI-HQ) and other FBI divisions, Legal Attachés, other federal agencies, and host countries. Specifically, the ICU has program oversight for all fraud and corruption matters related to Overseas Contingency Operations (OCO), FCPA, and antitrust matters. Given the investigative and prosecutorial complexities associated with FCPA investigations, and to ensure and promote close coordination between FBI field offices, FBI-HQ, and Fraud Section, in 2008, the FBI created a national FCPA squad located in the FBI's Washington Field Office (WFO). This squad is responsible for investigating and/or providing investigative support for all FBI FCPA related investigations. The squad is staffed with a Supervisory Special Agent, 12 Special Agents, an Investigative Analyst, and an administrative support officer. The ICU also provides annual training in FCPA investigations to law enforcement agents from all over the United States, including agents from other agencies.

On January 13, 2010, the Enforcement Division of the SEC announced the creation of a specialized unit that will focus on violations of the FCPA. The FCPA Unit is comprised of approximately 30 attorneys from around the country. A primary mission of this Unit is to enhance the staff's expertise, to coordinate enforcement efforts, and to conduct efficient investigations. The Unit will also conduct more targeted sweeps and sector-wide investigations, alone and with other regulatory counterparts both in the U.S. and abroad. The FCPA Unit also has in-house experts, accountants, and other resources to ensure the SEC remains a very proactive organization in rooting out foreign bribery schemes. The SEC's budget ensures the FCPA unit members obtain adequate training, have state-of-the-art technological capability, and have an adequate travel budget to meet with foreign regulators and to speak with foreign witnesses.

#### ***Enforcement Actions (Since Ratification)***

See attached.

**Summaries of Foreign Corrupt Practices Act Enforcement Actions  
by the United States  
January 1, 1998 – September 30, 2012**

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**Summaries of Foreign Corrupt Practices Act Enforcement Actions  
by the United States  
January 1, 1998 – September 30, 2012**

**1. Tyco International Ltd.**

Resulting Criminal Enforcement Action(s):

- A. In Re Tyco International, Ltd. (September 21, 2012)**
- B. United States v. Tyco Valves & Controls Middle East, Inc. (E.D. Va., September 24, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Tyco International, Ltd. (D.D.C., September 24, 2012)**
- D. SEC v. Tyco International Ltd. (S.D.N.Y., April 17, 2006)**

Entities and Individuals:

- Tyco International, Ltd., non-prosecution agreement announced September 24, 2012; civil complaint filed, September 24, 2012.
- Tyco Valves & Controls Middle East, Inc., charged September 24, 2012.
- Tyco International Ltd., civil complaint filed April 17, 2006.

Criminal Charges:

- Falsification of books and records (Tyco)
- Conspiracy
  - To bribe foreign officials (Tyco Middle East)

Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: As to Tyco International, Ltd.: China, India, Thailand, Laos, Indonesia, Bosnia, Croatia, Serbia, Slovenia, Slovakia, Iran, Saudi Arabia, Libya, Syria, the United Arab Emirates, Mauritania, Congo, Niger, Madagascar, Turkey, Poland, Malaysia, Egypt, 1998-2009; Brazil, 1998; Korea, 1996-2000; As to Tyco Valves & Controls Middle East: Saudi Arabia, Iran, United Arab Emirates, 2003-2006

Summary:

On September 21, 2012, Tyco International Ltd. (“Tyco”), a Switzerland based company that manufactures and sells products related to security, fire protection and energy, entered into a three-year non-prosecution agreement (“NPA”) with the Department of Justice to resolve violations of the FCPA. On September 24, 2012, in the U.S. District Court for the District of Columbia, the Securities and Exchange Commission (“SEC”) filed a civil complaint charging Tyco with violations of the anti-bribery, books and records, and internal control provisions of the FCPA. On the same date, Tyco Valves & Controls Middle East, Inc. (“Tyco Middle East”), an indirect, wholly owned subsidiary of Tyco that sold and marketed valves and other industrial equipment throughout the Middle East, pleaded guilty in the U.S. District Court for the Eastern District of Virginia, to one count of conspiracy to violate the anti-bribery provision of the FCPA.

According to the NPA, a number of Tyco’s subsidiaries made illicit payments, both directly and indirectly, to government officials in various countries in order to obtain and retain business and falsely recorded those payments in Tyco’s corporate books and records as legitimate “commission” charges. In

addition, during the relevant time period, Tyco knowingly conspired with its subsidiaries to falsify its books and records in connection with these improper payments.

According to the criminal information to which Tyco Middle East pleaded guilty, the company paid bribes to officials employed by Saudi Aramco, an oil and gas company controlled and managed by the government of the Kingdom of Saudi Arabia, in order to obtain contracts with Saudi Aramco.

The SEC's complaint alleges that Tyco's books and records were misstated as a result of the misconduct, and that Tyco failed to devise and maintain internal controls sufficient to detect the violations. The complaint also alleges that the payments made by the sales agents to foreign government officials violated the anti-bribery provisions of the FCPA.

According to court documents, more than \$10.5 million of illicit payments were paid during the bribery scheme, which resulted in a profit of more than \$4.6 million.

In 1998, Tyco, then headquartered in Bermuda, acquired Earth Tech Brazil notwithstanding the fact that it knew Earth Tech had made various illegal payments to Brazilian officials to obtain business. Another one of Tyco's acquisitions, Dong Bang, a South Korean firm, spent \$32,000 entertaining various South Korean officials and paid \$7,500 to an employee of a nuclear power plant to obtain contracts. Despite the fact that Tyco knew such payments were common in Brazilian and South Korean business practices, it did not have an FCPA compliance program and its system of internal controls failed to prevent subsequent bribes.

**Criminal Disposition:**

On September 21, 2012, Tyco entered into a three-year non-prosecution agreement with the Department and was ordered to pay a \$13.68 million criminal penalty. The agreement also requires Tyco to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations.

On September 24, 2012, Tyco Middle East pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA. On September 26, 2012, the company was sentenced to pay a criminal penalty of \$2.1 million, which was included as part of the \$13.68 million penalty imposed on Tyco.

**Civil Disposition:**

On April 17, 2006, the Commission filed a settled complaint against Tyco and imposed a \$50 million penalty for a range of violations of the federal securities laws, including violations of the FCPA by Tyco's operations in Brazil and South Korea. Tyco also paid \$1 million in disgorgement.

On September 24, 2012, Tyco consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Tyco was ordered to pay \$10,564,992 in disgorgement and \$2,566,517 in prejudgment interest.

## **2. Oracle Corporation**

**Resulting Civil/Administrative Enforcement Action(s):**

**A. Oracle Corporation (N.D. Cal., August 16, 2012)**

**Entities and Individuals:**

- Oracle Corporation, civil complaint filed August 16, 2012.

**Civil Charges:**

- Falsification of books and records
- Internal controls violations

**Location and Time Period of Misconduct:** India, 2005-2007.

Summary:

On August 16, 2012, the Securities and Exchange Commission ("SEC") filed civil charges in the U.S. District Court for the Northern District of California San Francisco Division, charging Oracle Corporation ("Oracle"), a California based Software Company and provider of computer hardware products and services, with violations of the books and records and internal controls provisions of the FCPA.

According to the SEC's complaint, between 2005 and 2007, Oracle's India based subsidiary, Oracle India Private Limited ("Oracle India") sold software licenses and services to India's government through local distributors, and then had the distributors "park" excess funds from the sales outside Oracle India's books and records.

The SEC's complaint alleges that Oracle violated the FCPA's books and records provisions and internal controls provisions by failing to accurately record the side funds that Oracle India maintained with its distributors. In addition, the complaint alleges that Oracle failed to devise and maintain a system of effective internal controls that would have prevented the improper use of company funds.

Civil Disposition:

On August 16 2012, without admitting or denying the SEC's allegations, Oracle consented to the entry of a final judgment ordering the company to pay a \$2 million penalty and permanently enjoining it from future violations of the FCPA.

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**3. Pfizer**

Resulting Criminal Enforcement Action(s):

**A. United States v. Pfizer H.C.P. Corporation (D.D.C., August 7, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Pfizer Inc. (D.D.C., August 7, 2012)**

**C. SEC v. Wyeth LLC (D.D.C., August 7, 2012)**

Entities and Individuals:

- Pfizer H.C.P. Corporation, charged and deferred prosecution agreement entered August 7, 2012.
- Pfizer Inc., civil complaint filed August 7, 2012.
- Wyeth LLC, civil complaint filed August 7, 2012.

Criminal Charges:

- Bribery of foreign officials
- Conspiracy
  - To bribe foreign officials

Civil Charges:

- Falsification of books and records (both defendants)
- Internal controls violations (both defendants)

Location and Time Period of Misconduct: As to Pfizer H.C.P. Corporation: Bulgaria, Croatia, Kazakhstan, Russia, 1997-2006; As to Pfizer Inc.: Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia, Serbia, 2001-2007; As to Wyeth LLC: Indonesia, Pakistan, China, Saudi Arabia, 2005-2010.

Summary:

On August 7, 2012, in the U.S. District Court for the District of Columbia, the Department of Justice filed a criminal information charging Pfizer H.C.P. Corporation (“Pfizer H.C.P.”), an indirect wholly owned subsidiary of Pfizer Inc. (“Pfizer”), with conspiracy and anti-bribery violations of the Foreign Corrupt Practices Act (“FCPA”). On the same date, Pfizer H.C.P. entered into a two-year deferred prosecution agreement (“DPA”) with the department to resolve the FCPA violations. On August 7, 2012, the U.S. Securities Exchange Commission (“SEC”) filed civil charges in the United States District Court for the District of Columbia against Pfizer and Wyeth LLC (“Wyeth”), a subsidiary of Pfizer, charging the companies with violations of the books and records and internal control provisions of the FCPA.

*Pfizer H.C.P. Corporation:*

Pfizer H.C.P.’s indirect parent company Pfizer was a global pharmaceutical, animal health and consumer Product Company headquartered in New York, New York. According to the criminal information, between 1997 and 2006, Pfizer H.C.P., through its employees and agents, agreed to make improper payments and to provide benefits, to include kickbacks, cash payments, gifts, entertainment and travel expenses, to government officials, including physicians, pharmacologists and senior government officials, to induce the purchase of Pfizer products and to obtain regulatory approvals for Pfizer products.

According to court documents, Pfizer H.C.P., through its employees, falsely recorded the improper transactions in their books and records as educational or charitable support payments in an effort to conceal the improper nature of the transactions. The falsely recorded transactions were incorporated into the books and records of Pfizer.

During the relevant time period, Pfizer H.C.P. paid more than \$2 million of illegal payments to officials in Bulgaria, Croatia, Kazakhstan, and Russia in exchange for improper business advantages.

*Pfizer Inc.*

According to the SEC’s complaint, Pfizer, a global pharmaceutical company, made a voluntary disclosure of violations of the FCPA by its subsidiaries to the SEC and the Department of Justice in October 2004 and fully cooperated with the investigations. According to the complaint, between 2001 and 2007, employees and agents of Pfizer’s subsidiaries made illegal payments to foreign government officials in Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia and Serbia, for the purpose of influencing regulatory and formulary approvals, purchase decisions, prescription decisions, and to clear customs.

These improper payments were inaccurately recorded in the books and records of Pfizer’s subsidiaries and were consolidated in the financial reports of Pfizer. Although Pfizer did not know of or consent to the illegal payments, it failed to devise and maintain an adequate system of internal accounting controls to prevent or detect the payments.

*Wyeth LLC*

Wyeth was a global pharmaceutical company headquartered in Madison, New York, and was later acquired by Pfizer in October 2009. According to the SEC’s complaint, Wyeth’s subsidiaries engaged in FCPA violations primarily before but also after the company’s acquisition by Pfizer. It is alleged that from 2005 to 2010, subsidiaries marketing Wyeth nutritional products in China, Indonesia, and Pakistan bribed government doctors to recommend their products to patients by making cash payments or in some cases providing cell phones or travel incentives. It is also alleged that Wyeth’s subsidiary in Saudi Arabia made an improper cash payment to a customs official to secure the release of a shipment of promotional items used for marketing purposes.

According to the SEC, Wyeth’s subsidiaries inaccurately recorded the improper payments in their books and records, which were consolidated in Wyeth’s financial reports, and, after the 2009 acquisition, those payments were consolidated in financial reports of Pfizer. The SEC alleges that Wyeth failed to maintain adequate internal controls to detect or prevent an FCPA violation.

*Criminal Disposition:*

On August 7 2012, Pfizer H.C.P. entered into a two-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$15 million criminal penalty, to continue to implement rigorous internal controls and to fully cooperate with the Department. The agreement recognizes the timely voluntary disclosure of Pfizer H.C.P.'s parent company, Pfizer. Additionally, Pfizer H.C.P. received a reduction in its penalty as a result of Pfizer's cooperation.

*Civil Disposition:*

On August 7, 2012, Pfizer consented to the entry of a final judgment by the SEC which ordered the company to pay disgorgement of \$16,032,676, and prejudgment interest of \$10,307,268. On the same date, without admitting or denying the allegations, Wyeth consented to the entry of a final judgment ordering the company to pay disgorgement of \$17,217,831 and prejudgment interest of \$1,658,793. Wyeth is also required to report to the SEC on the status of its remediation and implementation of compliance measures over a two-year period and is permanently enjoined from further violations of the books and records and internal controls provisions of the FCPA.

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**4. NORDAM Group Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re NORDAM Group Inc. (July 17, 2012)**

*Entities and Individuals:*

- NORDAM Group Inc., non-prosecution agreement announced July 17, 2012.

*Criminal Charges:*

- Bribery of foreign officials

*Location and Time Period of Misconduct:* People's Republic of China, 1999 - 2008

*Summary:*

On July 17, 2012, NORDAM Group Inc. ("NORDAM"), a Tulsa, Oklahoma headquartered corporation that designs and manufactures aircraft parts and provides aircraft maintenance, repair and overhaul (MRO) services, entered into a three-year non-prosecution agreement ("NPA") with the Department of Justice to resolve violations of the Foreign Corrupt Practices Act ("FCPA").

According to the agreement, between 1999 and 2008, NORDAM, its subsidiary NORDAM Singapore Pte Ltd. ("NSPL") and affiliate World Aviation Associates Pte Ltd. ("WAAPL") paid bribes to employees of airlines created, controlled and exclusively owned by the People's Republic of China. The bribes were paid both directly and indirectly to airline employees of state owned entities in order to obtain and retain MRO business with those customers.

According to court documents, NORDAM employees were made aware of and approved the payment of these bribes and internally referred to them as "commissions" or "facilitator fees" in an effort to disguise the payments. In an attempt to further disguise the bribes paid, three WAAPL employees entered into sales representation agreements with fictitious entities. The commissions NORDAM paid to the fictitious entities were used, at least in part, to pay employees of customers to assist in securing contracts for NORDAM and NSPL.

Criminal Disposition:

On July 17, 2012, NORDAM entered into a three-year non-prosecution agreement with the Department and was ordered to pay a \$2 million criminal penalty. The agreement also requires NORDAM to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations.

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**5. Orthofix International, N.V.**

Resulting Criminal Enforcement Action(s):

**A. United States v. Orthofix International, N.V. (E.D. Tex., July 10, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Orthofix International, N.V. (E.D. Tex., July 10, 2012)**

Entities and Individuals:

- Orthofix International, N.V., charged and deferred prosecution agreement entered July 10, 2012; civil complaint filed July 10, 2012.

Criminal Charges:

- Internal controls violations

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Mexico, 2003-2010.

Summary:

On August 10, 2012, the U.S. District Court for the Eastern of Texas unsealed a case in which Orthofix International, N.V. (“Orthofix”), a publicly traded corporation involved in the design, development, manufacture, marketing, and distribution of medical devices, was charged in a criminal information, filed under seal on July 10, 2012, with one count of violating the internal accounting controls provisions of the Foreign Corrupt Practices Act (“FCPA”). To resolve the violations, Orthofix and the Department of Justice entered into a three-year deferred prosecution agreement (“DPA”), also filed under seal on July 10, 2012. Also on July 10, 2012, the Securities and Exchange Commission (“SEC”) filed a civil complaint, which was not under seal, charging Orthofix with violations of the books and records and internal control provisions of the FCPA.

According to the criminal information, between 2003 and March 2010, Orthofix’s wholly-owned Mexican subsidiary, Promeca S.A. de C.V. (“Promeca”), paid bribes in excess of \$300,000 to Mexican officials in order to obtain and retain sales contracts from Instituto Mexicano del Seguro Social (“IMSS”), the Mexican government-owned healthcare and social services institution. These payments were frequently referred to as “chocolates” by Promeca personnel, who commonly understood that term to describe bribes.

The civil complaint further provides that the improper payments made by Orthofix’s subsidiary were falsely recorded in the company’s books and records as cash advances to Promeca executives or training and promotion expenses. In addition, the complaint alleges that Orthofix generated a profit of approximately \$4.9 million as a result of the illicit payments.

Both the DPA and civil complaint acknowledges Orthofix’s voluntary disclosure of the FCPA violations to the Department of Justice and SEC.

*Criminal Disposition:*

On July 10, 2012, Orthofix entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$2.22 million criminal penalty, to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations.

*Civil Disposition:*

On July 10, 2012, Orthofix consented to the entry of a final judgment permanently enjoining the company from violating the books and records, and internal controls provisions of the FCPA. In addition, Orthofix was ordered to pay \$4,983,644 in disgorgement and more than \$242,000 in prejudgment interest. Orthofix also agreed to certain undertakings, including monitoring its FCPA compliance program and reporting back to the SEC for a two-year period.

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**6. Data Systems & Solution LLC**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Data Systems & Solutions LLC (June 18, 2012)**

*Entities and Individuals:*

- Data Systems & Solutions LLC, charged and deferred prosecution entered June 18, 2012.

*Criminal Charges:*

- Bribery of foreign officials
- Conspiracy
  - To bribe foreign officials

*Location and Time Period of Misconduct:* Lithuania, 1999 - 2004

*Summary:*

On June 18, 2012, Data Systems & Solution LLC (“DS&S”), a Reston, Virginia headquartered corporation that designs, installs and maintains instrumentation and control systems at nuclear and fossil fuel power plants, was charged in the U.S. District Court for the Eastern District of Virginia, with conspiracy and anti-bribery violations of the Foreign Corrupt Practices Act (“FCPA”). On the same date, DS&S entered into a two-year deferred prosecution agreement (“DPA”) with the Department to resolve the violations.

According to the agreement, between 1999 and 2004, DS&S paid bribes and provided other things of value to officials employed by the Ignalina Nuclear Power Plant (“INPP”), a state owned power plant in Lithuania, in order to obtain and retain multi-million dollar instrumentation and control contracts. In an effort to disguise the improper payments made, DS&S funneled payments through several subcontractors located in the United States and abroad.

According to court documents, during the relevant time period, INPP awarded DS&S a number of contracts valued over \$20 million.



Criminal Disposition:

On June 18, 2012, DS&S entered into a two-year DPA with the Department and was ordered to pay an \$8.82 million criminal penalty. The agreement also requires DS&S to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations. The agreement acknowledges DS&S's cooperation with the Department's investigation.

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**7. Garth Peterson**

Resulting Criminal Enforcement Action(s):

**A. United States v. Garth Peterson (E.D.N.Y., April 25, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Garth Peterson (E.D.N.Y., April 25, 2012)**

Entities and Individuals:

- Garth Peterson, former Managing Director of Morgan Stanley's Real Estate Group, charged March 26, 2012; civil complaint filed April 25, 2012.

Criminal Charges:

- Conspiracy:
  - to circumvent internal controls

Civil Charges:

- Bribery of foreign officials
- Circumvention of internal controls
- Falsification of books and records
- Aiding and Abetting
  - anti-fraud provisions of the Investment Advisers Act

Location and Time Period of Misconduct: China, 2004-2007.

Summary:

On March 26, 2012, the Department of Justice filed a criminal information against Garth Peterson ("Peterson") in the United States District Court for the Eastern District of New York. Peterson worked for Morgan Stanley, a global financial-services firm, from 2002 to 2008, holding various positions, including Managing Director in charge of Morgan Stanley Real Estate Group's ("MSRE") Shanghai Office in the People's Republic of China. The criminal information charges Peterson with one count of conspiracy to circumvent Morgan Stanley's internal accounting controls in violation of the FCPA. On April 25, 2012, the Securities Exchange Commission ("SEC") filed a civil complaint against Peterson, charging him with violations of the anti-bribery, books and records and internal control provisions of the FCPA, and with aiding and abetting violations of the anti-fraud provisions of the Investment Advisers Act of 1940.

According to court documents, Morgan Stanley maintained a system of internal controls to ensure accountability for its assets and to prevent employees from offering, promising or paying anything of value to foreign government officials. Morgan Stanley's internal policies, which were updated regularly to reflect regulatory developments and specific risks, prohibited bribery and addressed corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment. Morgan Stanley frequently trained its employees on its internal policies, the FCPA and other anti-corruption laws. Between 2002 and 2008, Morgan Stanley trained various groups of Asia-based

personnel on anti-corruption policies 54 times. During the same period, Morgan Stanley trained Peterson on the FCPA seven times and reminded him to comply with the FCPA at least 35 times.

According to the criminal information, Peterson conspired with others to circumvent Morgan Stanley's internal controls in order to transfer a multi-million dollar ownership interest in a Shanghai building to himself and a Chinese public official with whom he had a personal friendship. It is alleged that Peterson encouraged Morgan Stanley to sell an interest in a Shanghai real-estate deal to Shanghai Yongye Enterprise Co. Ltd. ("Yongye"), a state-owned and state-controlled entity. Peterson falsely represented to others within Morgan Stanley that Yongye was purchasing the real-estate interest, when in fact, Peterson knew the interest would be conveyed to a shell company controlled by him, a Chinese public official associated with Yongye and a Canadian attorney. After Peterson and his co-conspirators falsely represented to Morgan Stanley that Yongye owned the shell company, Morgan Stanley sold the real-estate interest in 2006 to the shell company at a discount to the interest's actual 2006 market value.

Peterson and his co-conspirators continued to claim falsely that Yongye owned the shell company, and in the years since, they have periodically accepted equity distributions. As a result of the scheme, the conspirators profited more than \$2.5 million.

*Criminal Disposition:*

On April 25, 2012, Peterson pleaded guilty to one count of conspiracy to circumvent internal controls. On August 16, 2012, he was sentenced to 9 months' imprisonment, followed by 3 years' supervised release.

*Civil Disposition:*

Peterson consented to the entry of a final judgment permanently enjoining him from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Peterson was ordered to disgorge \$254,589, and was required to relinquish to a court-appointed receiver the interest he secretly acquired from Morgan Stanley's funds. Peterson has also consented to permanent industry bars based on the anticipated entry of the injunctions against him and his criminal conviction.

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**8. Biomet Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Biomet Inc. (D.D.C., March 26, 2012)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Biomet Inc. (D.D.C., March 26, 2012)**

*Entities and Individuals:*

- Biomet, Inc., charged and deferred prosecution agreement announced March 26, 2012; civil complaint filed March 26, 2012.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials
- Falsification of books and records

*Civil Charges:*

- Bribery of foreign officials
- Falsification of books and records

- Internal controls violations

*Location and Time Period of Misconduct:* Argentina, 2000-2008; Brazil, 2001-2008; China, 2001- 2006.

*Summary:*

On March 26, 2012, the Department of Justice and the Securities and Exchange Commission (“SEC”) filed simultaneous criminal and civil charges against Biomet, Inc. (“Biomet”), in the United States District Court for the District of Columbia. Biomet, an Indiana headquartered company that manufactures and sells orthopedic medical devices worldwide, was charged in connection with alleged violations of the anti-bribery, books and records and internal controls provisions of the FCPA. On the same day, Biomet entered into a three-year deferred prosecution agreement with the Department to resolve the FCPA violations.

According to the criminal information, Biomet, its subsidiaries, employees and agents made various improper payments from approximately 2000 to 2008 to publicly-employed health care providers in Argentina, Brazil and China to secure lucrative business with hospitals. During this time, it is alleged that more than \$1.5 million in direct and indirect corrupt payments were made to public doctors in the respective countries. According to court records, Biomet, its executives, employees and agents falsely recorded the payments on its books and records as “commissions,” “royalties,” “consulting fees” and “scientific incentives” to conceal the true nature of the payments.

The SEC further alleges that Biomet failed to implement internal controls to detect or prevent bribery. Additionally, that false documents which concealed improper payments, were routinely created or accepted by Biomet employees and managers of all levels throughout the almost decade long bribery scheme.

*Criminal Disposition:*

On March 26, 2012, Biomet entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$17.28 million criminal penalty, as well as ordered to continue implementing rigorous internal controls, cooperate fully with the Department and retain an independent compliance monitor for 18 months.

*Civil Disposition:*

On March 26, 2012, without admitting or denying the SEC’s allegations, Biomet consented to the entry of a court order requiring payment of more than \$4.4 million in disgorgement and approximately \$1.14 million in prejudgment interest. Additionally, Biomet was ordered to retain an independent compliance monitor for a period of 18 months to review its FCPA compliance program.

## **9. Bizjet International Sales and Support, Inc. and Lufthansa Technik AG**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Lufthansa Technik AG (March 14, 2012)**

**B. United States v. Bizjet International Sales and Support, Inc. (March 14, 2012)**

*Entities and Individuals:*

- Lufthansa Technik AG, non-prosecution agreement announced March 14, 2012.
- Bizjet International Sales and Support, Inc., charged and deferred prosecution agreement announced March 14, 2012.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (Bizjet International Sales and Support, Inc.)

- Bribery of foreign officials (Lufthansa Technik AG)

*Location and Time Period of Misconduct:* Mexico, 2004-2010; Panama, 2004-2010.

*Summary:*

On March 14, 2012, the Department of Justice filed a one-count information in the Northern District of Oklahoma against Bizjet International Sales and Support, Inc. (“Bizjet”), an Oklahoma based provider of aircraft maintenance, repair and overhaul, charging the company with conspiracy to bribe foreign officials in violation of the FCPA. On the same date, Bizjet entered into a three-year deferred prosecution agreement with the Department of Justice to resolve the FCPA violations, and Lufthansa Technik AG (“Lufthansa”), a German based provider of aircraft-related services and indirect parent company of Bizjet, entered into a three-year non-prosecution agreement with the Department related to the conduct of Bizjet.

According to court records, between 2004 and 2010, BizJet employees paid bribes to public officials employed by the Mexican Policia Federal Preventiva, the Mexican Coordinacion General de Transportes Aereos Presidenciales, the air fleet for the Gobierno del Estado de Sinaloa, the air fleet for the Gobierno del Estado de Sonora and the Republica de Panama Autoridad Aeronautica Civil. Bizjet made unlawful payments to officials in Mexico and Panama in order to obtain and retain contracts to perform aircraft maintenance, repair and overhaul in Latin America. In many instances, BizJet paid the bribes directly to the foreign officials. In other instances, BizJet funneled the bribes through a shell company owned and operated by a BizJet sales manager. BizJet executives orchestrated, authorized and approved the unlawful payments which they called “commissions,” “incentives” or “referral fees.”

*Criminal Disposition:*

On March 14, 2012, Bizjet entered into a three-year deferred prosecution agreement with the Department. As part of the agreement, Bizjet was required to pay an \$11.8 million criminal penalty. The agreement also requires Bizjet to report to the Department in no less than twelve-month intervals regarding the company’s remediation and implementation of an enhanced compliance program.

On the same day, Lufthansa entered into a three-year non-prosecution agreement with the Department. The agreement requires Lufthansa to adhere to rigorous compliance, book-keeping and internal controls standards and to periodically report to the Department regarding its remediation and implementation of a strengthened compliance program.

Both agreements acknowledge respectively Bizjet’s and Lufthansa’s voluntary disclosure of the FCPA violations to the Department and their extraordinary cooperation during the investigation.

## **10. Smith & Nephew**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Smith & Nephew, Inc. (D.D.C., February 6, 2012)**

*Resulting Civil/Administrative Enforcement Action(s):*

- B. SEC v. Smith & Nephew Plc (D.D.C., February 6, 2012)**

*Entities and Individuals:*

- Smith & Nephew, Inc., charged February 6, 2012.
- Smith & Nephew Plc., civil complaint filed February 6, 2012.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials

- to falsify books and records
- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Greece, 1997-2008.

Summary:

On February 6, 2012, the Department of Justice and the Securities and Exchange Commission filed simultaneous criminal and civil charges in the United States District Court for the District of Columbia against Smith & Nephew, Inc. and its parent company, Smith & Nephew, plc. Smith & Nephew manufactures and sells medical devices globally, with headquarters in London, England and Memphis, Tennessee. The criminal charges were filed in connection with a deferred prosecution agreement, alleging violations of the anti-bribery, books and records and internal control provisions of the FCPA; the civil complaint charged the same conduct and was in conjunction with a settlement agreement. Smith & Nephew admitted to the conduct charged.

According to the criminal information, Smith & Nephew, through certain executives, employees and affiliates, agreed to sell products at full list price to a Greek distributor based in Athens, and then pay the amount of the distributor discount to an off-shore shell company controlled by the distributor. These off-the-books funds were then used by the distributor to pay cash incentives and other things of value to publicly-employed Greek health care providers to induce the purchase of Smith & Nephew products. In total, from 1998 to 2008, Smith & Nephew, its affiliates and employees authorized the payment of approximately \$9.4 million to the distributor's shell companies, some or all of which was passed on to physicians to corruptly induce them to purchase medical devices manufactured by Smith & Nephew.

Criminal Disposition:

On February 6, 2012, Smith & Nephew Inc. entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$16.8 million criminal penalty, as well as to continue implementing rigorous internal controls, cooperate fully with the Department and retain an independent compliance monitor for 18 months.

Civil Disposition:

Smith & Nephew plc consented to a court order permanently enjoining it from future violations of the FCPA. The company was also ordered to pay more than \$4 million in disgorgement and approximately \$1.3 million in prejudgment interest. Additionally, S&N plc was ordered to retain an independent compliance monitor for a period of 18 months to review its FCPA compliance program.

## 11. Bonny Island Liquefied Natural Gas Bribe Scheme

Resulting Criminal Enforcement Action(s):

- A. **United States v. JGC Corporation (S.D. Tex., April 6, 2011)**
- B. **United States v. Snamprogetti Netherlands B.V. (S.D. Tex., July 7, 2010)**
- C. **United States v. Technip S.A. (S.D. Tex., June 28, 2010)**
- D. **United States v. Jeffrey Tesler, et al. (S.D. Tex., February 17, 2009)**
- E. **United States v. Kellogg Brown & Root, LLC (S.D. Tex., February 6, 2009)**
- F. **United States v. Albert Jackson Stanley (S.D. Tex., August 29, 2008)**

**G. United States v. Marubeni Corporation (S.D. Tex., January 17, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- H. SEC v. ENI, S.p.A., et al. (S.D. Tex., July 7, 2010)**
- I. SEC v. Technip (S.D. Tex., June 28, 2010)**
- J. SEC v. Halliburton Company, et al. (S.D. Tex., February 6, 2009)**
- K. SEC v. Albert Jackson Stanley (S.D. Tex., September 3, 2008)**

Entities and Individuals:

- JGC Corporation, charged April 6, 2011.
- ENI, S.p.A., civil complaint filed July 7, 2010.
- Snamprogetti Netherlands, B.V., charged July 7, 2010; civil complaint filed July 7, 2010.
- Technip S.A., charged June 28, 2010; civil complaint filed June 28, 2010.
- Kellogg Brown & Root LLC, charged February 6, 2009.
- Halliburton Company, civil complaint filed February 6, 2009.
- KBR, Inc., civil complaint filed February 6, 2009.
- Albert “Jack” Stanley, former CEO of KBR, charged September 3, 2008; civil complaint filed September 3, 2008.
- Jeffrey Tesler, agent of KBR, indicted February 19, 2009.
- Wojciech Chodan, Vice President, MW Kellogg Ltd. (KBR subsidiary), indicted February 19, 2009.
- Marubeni Corporation, charged January 17, 2012.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to commit wire fraud (Stanley)
  - to commit mail fraud (Stanley)
- Bribery of foreign officials (all defendants except JGC)
- Falsification of books and records (KBR, Inc. and Halliburton Company)
- Aiding and abetting the bribery of foreign officials (Snamprogetti, JGC, and Marubeni)

Civil Charges:

- Bribery of foreign officials (KBR, Technip, Snamprogetti, and Stanley)
- Internal controls violations (Halliburton, ENI, Snamprogetti, and Technip)
- Falsification of books and records (Halliburton, ENI, Snamprogetti, and Technip)
- False accounting (KBR and Stanley)
- Aiding and abetting Halliburton’s internal controls violations (KBR and Stanley)
- Aiding and abetting Halliburton’s falsification of books and records (KBR and Stanley)

Location and Time Period of Misconduct: Nigeria, 1995-2004.

Summary:

From 1995-2004, Kellogg Brown & Root Inc. (KBR), Technip S.A. (Technip), Snamprogetti Netherlands B.V. (Snamprogetti), and JGC were each part of the TSKJ joint venture that was awarded four contracts related to the construction of the Bonny Island liquefied natural gas facility by Nigeria LNG Ltd. (NLNG), which is 49 percent owned by the government-owned Nigerian National Petroleum Corporation (NNPC). In exchange for being awarded the contracts, valued at more than \$6 billion, the joint-venture partners used two agents, Jeffrey Tesler, a British lawyer, and Marubeni Corporation, a Japanese trading

company, to pay bribes totaled in excess of \$182 million to a range of Nigerian government officials, including officials of the executive branch of the Nigerian government and officials at NNPC and NLNG.

At crucial junctures preceding the award of the contracts, KBR's CEO, Albert "Jack" Stanley, and other representatives of the joint venture, met with three successive former holders of a top-level office in the executive branch of the Nigerian government to ask the office holders to designate a representative with whom TSKJ should negotiate bribes to Nigerian government officials. Ultimately, TSKJ paid approximately \$132 million to a Gibraltar corporation controlled by Tesler and more than \$50 million to Marubeni during the course of the bribery scheme. Wojciech Chodan, a former salesperson and consultant for a United Kingdom subsidiary of KBR, has also been charged for his role in the bribery scheme.

#### *Criminal Disposition:*

On September 3, 2008, Stanley pleaded guilty to the charges contained in the two count information filed against him. Stanley was sentenced on February 23, 2012, to 30 months' imprisonment, followed by three years' supervised release and ordered to pay a criminal penalty of \$10.8 million.

KBR LLC pleaded guilty in Houston, Texas before U.S. District Judge Keith P. Ellison on February 11, 2009. Under the terms of its plea agreement, KBR LLC agreed to pay a \$402 million criminal fine, to retain an independent compliance monitor for a three-year period to review the design and implementation of KBR's compliance program, and to make periodic reports to the Department. KBR LLC also agreed to cooperate with the Department in its ongoing investigations.

On June 28, 2010, Technip entered into a two-year deferred prosecution agreement with the Department and agreed to pay a criminal penalty of \$240 million. In addition, Technip agreed to retain an independent compliance monitor for a two-year period to review the design and implementation of Technip's compliance program.

Snamprogetti entered into a two-year deferred prosecution agreement with the Department on July 7, 2010, and agreed to pay a \$240 million criminal penalty. As part of the agreement, Snamprogetti, its current parent company, Saipem S.p.A., and its former parent company, ENI, also agreed to ensure that their compliance programs satisfied certain standards and to cooperate with the department in ongoing investigations.

Wojciech Chodan was extradited from the United Kingdom to the United States on December 3, 2010. He pleaded guilty to one count of conspiracy to violate the FCPA on December 6, 2010, and agreed to forfeit \$726,885. Chodan was sentenced on February 22, 2012, to one year probation and ordered to pay a criminal penalty of \$20,000.

Jeffrey Tesler was extradited from the United Kingdom to the United States on March 10, 2011. He pleaded guilty to one count of conspiracy to violate the FCPA on March 11, 2011, and agreed to forfeit \$148,964,568. Tesler was sentenced on February 23, 2012, to 21 months' imprisonment, followed by two years' supervised release and ordered to pay a criminal penalty of \$25,000.

On April 6, 2011, JGC Corporation entered into a two-year deferred prosecution agreement with the Department, which requires JGC to retain an independent compliance consultant for a term of two years and to pay a criminal penalty of \$218.8 million.

On January 17, 2012, Marubeni Corporation entered into a two-year deferred prosecution agreement with the Department to resolve pending FCPA charges. The agreement requires Marubeni to retain a corporate compliance monitor and to pay a criminal penalty of \$5.4 million.

#### *Civil Disposition:*

On September 3, 2008, without admitting or denying the allegations in the complaint, Stanley consented to the entry of a final judgment in the SEC's civil case, which permanently enjoins him from violating the provisions named above. As part of both his criminal and civil settlements, Stanley agreed to cooperate with the Government's ongoing investigation.

On February 11, 2009, KBR LLC's parent company, KBR, and its former parent company, Halliburton, settled a related civil complaint with the SEC by jointly agreeing to the entry of an order

enjoining them from future violations of the FCPA, to each obtain an independent compliance monitor for three years, and to jointly pay \$177 million in disgorgement of profits

Without admitting or denying the SEC's allegations, on June 28, 2010 Technip consented to the entry of a court order permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Technip was ordered to disgorge \$98 million in ill-gotten profits from the scheme and prejudgment interest.

Without admitting or denying the SEC's allegations, on July 7, 2010, ENI consented to the entry of a court order permanently enjoining the company from violating the books and records and internal controls provisions of the FCPA. Similarly, Snamprogetti consented to the entry of a court order permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. Both companies also consented to the entry of court orders that require them, jointly and severally, to pay \$125 million in disgorgement.

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## **12. Magyar Telekom, PLC and Deutsche Telekom AG**

### **Resulting Criminal Enforcement Action(s):**

- A. In Re Deutsche Telekom AG (December 29, 2011)**
- B. United States v. Magyar Telekom Plc. (December 29, 2011)**

### **Resulting Civil/Administrative Enforcement Action(s):**

- C. SEC v. Deutsche Telekom AG and Magyar Telekom Plc (S.D.N.Y., December 29, 2011)**
- D. SEC v. Straub, et al., (S.D.N.Y., December 29, 2011)**

### **Entities and Individuals:**

- Deutsche Telekom AG, non-prosecution agreement announced December 29, 2011.
- Magyar Telekom Plc., charged December 29, 2011.

### **Criminal Charges:**

- Bribery of foreign officials (Magyar Telekom, Plc.)
- Falsification of books and records (Magyar Telekom, Plc. and Deutsche Telekom AG)

### **Civil Charges:**

- Aiding and Abetting:
  - Bribery of foreign officials (all defendants)
  - Falsification of books and records (all defendants)
  - Internal controls violations (all defendants)
- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- False or misleading statements to accountant or auditor (all defendants)

**Location and Time Period of Misconduct:** Republic of Macedonia, 2005-2006; Republic of Montenegro, 2005.

### **Summary:**

On December 29, 2011, a three-count information was filed in the Eastern District of Virginia against Magyar Telekom Plc. ("Magyar"), a Hungarian telecommunications company, charging the company with violations of the anti-bribery and books and records provisions of the FCPA. On the same date, Magyar entered into a two-year deferred prosecution agreement ("DPA") with the Department of Justice to resolve the FCPA violations, and Deutsche Telekom AG ("Deutsche"), a German



telecommunications company and majority owner of Magyar, entered into a two-year non-prosecution agreement (“NPA”) with the Department for its failure to keep books and records that accurately detailed the details of Magyar. On December 29, 2011, The U.S. Securities Exchange Commission (“SEC”) also filed civil charges in the United States District Court for the Southern District of New York, against Magyar, Deutsche, as well as three former Magyar executives, Elek Straub, Andras Balogh, and Tamas Morvai, alleging violations of the anti-bribery, books and records and internal control provisions of the FCPA.

According to court records, three senior executives—Straub, Balogh, and Morvai—at Magyar Telekom Plc. orchestrated, approved, and executed a plan to bribe Macedonian officials in 2005 and 2006 to prevent the introduction of a new competitor and gain other regulatory benefits. Magyar Telekom’s subsidiaries in Macedonia made illegal payments of approximately \$6 million under the guise of bogus consulting and marketing contracts. The same executives orchestrated a second scheme in 2005 in Montenegro related to Magyar Telekom’s acquisition of the state-owned telecommunications company there. Magyar Telekom paid approximately \$9 million through four sham contracts to funnel money to government officials in Montenegro.

Magyar Telekom entered into a secret agreement entitled the “Protocol of Cooperation” with senior Macedonian government officials to delay or preclude the issuance of a license to a new competitor and mitigate other adverse effects of the new law. To win their support, Magyar Telekom paid €4.875 million to a third-party intermediary under a series of sham contracts with the intention that the intermediary would forward money to the government officials.

Magyar Telekom used intermediaries to pay bribes to government officials in return for their support of Magyar Telekom’s acquisition of the state-owned telecommunications company on terms favorable to Magyar Telekom. Magyar Telekom also promised a Macedonian political party the opportunity to designate the beneficiary of a business venture in exchange for the party’s support.

*Criminal Disposition:*

On December 29, 2011, Magyar entered into a two-year deferred prosecution agreement with the Department. As part of this agreement, Magyar was required to pay a \$59.6 million criminal penalty, as well as to continue implementing rigorous internal controls. On the same day, Deutsche entered into a two-year non-prosecution agreement with the Department and agreed to pay a \$4.36 million criminal penalty.

*Civil Disposition:*

As part of its settlement with the SEC, Magyar and Deutsche consented to the entry of a permanent injunction against further violations of the FCPA and Magyar agreed to pay more than \$31.2 million in disgorgement and prejudgment interest.

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**13. Aon Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Aon Corporation (December 20, 2011)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Aon Corporation (D.D.C., December 20, 2011)**

*Entities and Individuals:*

- Aon Corporation, non-prosecution agreement announced and settled civil complaint filed December 20, 2011.

*Criminal Charges:*

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Costa Rica, 1990-2005; Egypt, 1983-2009; Vietnam, 2003-2007; Indonesia, 2002-2007; United Arab Emirates, 1997-2007; Myanmar, 1999-2005; Bangladesh, 2002-2007.

Summary:

On December 20, 2011, Aon Corporation (“Aon”), a publicly traded corporation headquartered in Chicago, Illinois, and one the world’s largest insurance brokerage firms, entered into a two-year non-prosecution agreement (NPA) with the Department of Justice, alleging that the company had committed violations of the anti-bribery, books and records, and internal control provisions on the FCPA. On the same date, the SEC filed a settled civil complaint against Aon in the U.S. District Court for the District of Columbia, charging the company with violations of the books and records, and internal controls provisions of the FCPA.

According to the NPA Aon’s subsidiaries made over \$3.6 million in improper payments to various parties between 1983 and 2007 as a means of obtaining or retaining insurance business in those countries. Some of the improper payments were made directly or indirectly to foreign government officials who could award business directly to Aon subsidiaries, who were in position to influence others who could award business to Aon subsidiaries, or who could otherwise provide favorable business treatment for the company’s interests. These payments were not accurately reflected in Aon’s books and records, and that Aon failed to maintain an adequate internal control system reasonably designed to detect and prevent the improper payments. According to court documents, the improper payments made by Aon’s subsidiaries fall into two general categories: (i) training, travel, and entertainment provided to employees of foreign government-owned clients and third parties; and (ii) payments made to third-party facilitators. Aon subsidiaries made these payments in various countries around the world, including Costa Rica, Egypt, Vietnam, Indonesia, United Arab Emirates, Myanmar, and Bangladesh. Aon realized over \$11.4 million in profits from these improper payments.

Criminal Disposition:

On December 20, 2011, Aon Corporation entered into a two-year non-prosecution agreement with the Department of Justice and was ordered to pay a \$1.76 million criminal penalty. The agreement also requires Aon to adhere to rigorous compliance, book-keeping and internal controls standards and cooperate fully with the Department.

Civil Disposition:

On December 20, 2011, without admitting or denying the SEC’s allegations, Aon Corporation consented to the entry of a final judgment that permanently enjoins the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Aon was ordered to pay \$11,416,814 in disgorgement and \$3,218,206 in prejudgment interest.

**Siemens Aktiengesellschaft (Siemens AG)**

Resulting Criminal Enforcement Action(s):

**A. United States v. Siemens Aktiengesellschaft (D.D.C., December 12, 2008)**

- B. United States v. Siemens S.A. (Argentina) (D.D.C., December 12, 2008)**
- C. United States v. Siemens Bangladesh Limited (D.D.C., December 12, 2008)**
- D. United States v. Siemens S.A. (Venezuela) (D.D.C., December 12, 2008)**
- E. United States v. Uriel Sharef, et al. (S.D.N.Y., December 12, 2011)**

**Resulting Civil/Administrative Enforcement Action(s):**

- F. United States v. All Assets Held in the Name of Zasz Trading and Consulting Pte Ltd., et al. (D.D.C., January 8, 2009)**
- G. SEC v. Siemens Aktiengesellschaft (D.D.C., December 12, 2008)**
- H. SEC. v. Uriel Sharef, et, al. (S.D.N.Y., December 13, 2011)**

**Entities and Individuals:**

- Siemens Aktiengesellschaft, charged December 12, 2008; civil complaint filed December 12, 2008.
- Siemens S.A. - Argentina, charged December 12, 2008.
- Siemens Bangladesh Limited, charged December 12, 2008.
- Siemens S.A. - Venezuela, charged December 12, 2008.
- Uriel Sharef, former member of the Central Executive Committee of Siemens AG, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Herbert Steffen, former Chief Executive Officer of Siemens Argentina, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Andres Truppel, former Chief Financial Officer of Siemens Argentina, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Ulrich Bock, former Senior Executive of Siemens Business Services, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Stephan Signer, former Senior Executive of Siemens Business Services, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Eberhard Reichert, former Senior Executive of Siemens Business Services, indicted December 12, 2011.
- Carlos Sergi, former intermediary and agent of Siemens, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Miguel Czysch, former intermediary and agent of Siemens, indicted December 12, 2011.
- Bernd Regendantz, former CFO of Siemens Business Services, civil complaint filed December 13, 2011.

**Criminal Charges:**

- Conspiracy:
  - to bribe foreign officials (Siemens S.A. - Venezuela Siemens Bangladesh Limited, and Sharef, et al.)
  - to falsify books and records (Siemens S.A. – Argentina, and Sharef, et al.)
  - to commit internal controls violations (Sharef, et al.)
  - to commit money laundering (Sharef, et al.)
  - to commit fraud (Sharef, et al.)
- Falsification of books and records (Siemens Aktiengesellschaft)
- Wire fraud (Sharef, et al.)

**Civil Charges:**

- Bribery of foreign officials (Siemens AG and Sharef, et al.)
- Internal controls violations (Siemens AG and Sharef, et al.)
- Falsification of books and records (Siemens AG and Sharef, et al.)

- Forfeiture (Zasz Trading and Consulting, *et al.*)

*Location and Time Period of Misconduct:* Argentina, 1998-2007; Nigeria, 2000-2001; Iraq, 2000-2002; Russia, 2000-2007; Bangladesh, 2001-2006; Venezuela, 2001-2007; Vietnam, 2002 and 2005-2006; Israel, 2002-2005; China, 2002-2007; Mexico, 2004.

*Summary:*

On December 11, 2008, Siemens Aktiengesellschaft (Siemens AG), a German corporation, and three of its subsidiaries were charged in separate criminal informations filed in the U.S. District Court for the District of Columbia for their roles in a scheme to bribe foreign officials in several countries. Siemens AG was charged with two counts of violating the internal controls and books and records provisions of the FCPA, while Siemens S.A. - Argentina was charged with conspiracy to violate the books and records provisions. In addition, Siemens Bangladesh Limited (Siemens Bangladesh) and Siemens S.A. – Venezuela (Siemens Venezuela) were each charged with one count of conspiracy to violate the anti-bribery and books and records provisions of the FCPA.

Between March 12, 2001 and September 30, 2007, Siemens violated the FCPA by engaging in a widespread and systematic practice of paying bribes to foreign government officials to obtain business. Siemens created elaborate payment schemes to conceal the nature of its corrupt payments, and the company's inadequate internal controls allowed the conduct to flourish. The misconduct involved employees at all levels, including former senior management, and revealed a corporate culture long at odds with the FCPA.

During this period, Siemens made thousands of payments to third parties in ways that obscured the purpose for, and the ultimate recipients of, the money. At least 4,283 of those payments, totaling approximately \$1.4 billion, were used to bribe government officials in return for business to Siemens around the world.

Among others, Siemens paid bribes on transactions to design and build metro transit lines in Venezuela; metro trains and signaling devices in China; power plants in Israel; high voltage transmission lines in China; mobile telephone networks in Bangladesh; telecommunications projects in Nigeria; national identity cards in Argentina; medical devices in Vietnam, China, and Russia; traffic control systems in Russia; refineries in Mexico; and mobile communications networks in Vietnam. Siemens also paid kickbacks to Iraqi ministries in connection with sales of power stations and equipment to Iraq under the United Nations Oil for Food Program. Siemens earned over \$1.1 billion in profits on these transactions.

An additional approximately 1,185 separate payments to third parties totaling approximately \$391 million were not properly controlled and were used, at least in part, for illicit purposes, including commercial bribery and embezzlement.

From 1999 to 2003, Siemens' Managing Board or "Vorstand" was ineffective in implementing controls to address constraints imposed by Germany's 1999 adoption of the Organization for Economic Cooperation and Development ("OECD") anti-bribery convention that outlawed foreign bribery. The Vorstand was also ineffective in meeting the U.S. regulatory and anti-bribery requirements that Siemens was subject to following its March 12, 2001, listing on the New York Stock Exchange. Despite knowledge of bribery at two of its largest groups — Communications and Power Generation — the company's tone at the top was inconsistent with an effective FCPA compliance program and created a corporate culture in which bribery was tolerated and even rewarded at the highest levels of the company. Employees obtained large amounts of cash from cash desks, which were sometimes transported in suitcases across international borders for bribery. Authorizations for payments were placed on post-it notes and later removed to eradicate any permanent record. Siemens used numerous slush funds, off-books accounts maintained at unconsolidated entities, and a system of business consultants and intermediaries to facilitate the corrupt payments.

Siemens failed to implement adequate internal controls to detect and prevent violations of the FCPA. Elaborate payment mechanisms were used to conceal the fact that bribe payments were made around the globe to obtain business. False invoices and payment documentation was created to make

payments to business consultants under false business consultant agreements that identified services that were never intended to be rendered. Illicit payments were falsely recorded as expenses for management fees, consulting fees, supply contracts, room preparation fees, and commissions. Siemens inflated U.N. contracts, signed side agreements with Iraqi ministries that were not disclosed to the U.N., and recorded the ASSF payments as legitimate commissions despite U.N., U.S., and international sanctions against such payments.

*Criminal Disposition:*

On December 15, 2008, Siemens AG and its three subsidiaries each pleaded guilty before U.S. District Judge Richard J. Leon in the District of Columbia. Subsequently, the Court imposed fines, as agreed to in the plea agreements, of \$448.5 million on Siemens AG and of \$500,000 each on Siemens Argentina, Siemens Bangladesh, and Siemens Venezuela, for a combined total criminal fine of \$450 million. Under the terms of the plea agreement, Siemens AG agreed to retain an independent compliance monitor for a four-year period to oversee the continued implementation and maintenance of a robust compliance program and to make reports to the company and the Department of Justice.

*Civil Disposition:*

Also on December 15, 2008, Siemens AG reached a settlement of the related civil complaint filed by the SEC. Without admitting or denying the Commission's allegations, Siemens consented to the entry of a court order permanently enjoining it from future violations of the FCPA. The court also ordered Siemens to pay \$350 million in disgorgement of wrongful profits.

Simultaneous with the settlement of the U.S. enforcement actions, Siemens AG agreed to a disposition resolving an ongoing investigation by the Munich Public Prosecutor's Office of Siemens AG's operating groups other than the Telecommunications group. Siemens AG agreed to pay €395 million, or approximately \$569 million, including a €250,000 corporate fine and €394.75 million in disgorgement of profits. Previously, in October 2007, in connection with charges related to corrupt payments to foreign officials by Siemens AG's Telecommunications operating group, Siemens AG settled and agreed to pay €201 million, or approximately \$287 million, including a €1 million fine and €200 in disgorgement of profits. On April 7, 2010, U.S. District Judge John D. Bates granted the Government's motion for default judgment and judgment of forfeiture in the civil forfeiture action filed against the approximately \$3 million in bribe proceeds being held in various bank accounts in Singapore.

On December 13, 2011, without admitting or denying the SEC's allegations, Bernd Regendantz consented to the entry of a final judgment that permanently enjoins him from future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. He was also ordered to pay a civil penalty of \$40,000.

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## **14. Watts Water Technologies, Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. In the Matter of Watts Water Technologies, Inc. and Leesen Chang (October 13, 2011)**

*Entities and Individuals:*

- Watts Water Technologies, Inc., cease-and-desist order issued October 13, 2011.
- Leesen Chang, cease-and-desist order issued October 13, 2011.

*Civil Charges:*

- Falsification of books and records
- Internal controls violations.

Location and Time Period of Misconduct: China, 2006-2009

Summary:

On October 13, 2011, Watts Water Technologies, Inc., a Delaware corporation headquartered in North Andover, Massachusetts, and Leesen Chang, a U.S. citizen and the former interim general manager of CWV and vice president of sales for Watts' management subsidiary in China, entered into a settlement with the SEC regarding the company's alleged violations of the books and records and internal controls provisions of the FCPA.

The charges against Watts Water Technologies, Inc. and Leesen Chang stemmed from the alleged conduct of Watts Valve Changsha Co., Ltd., a wholly-owned Chinese subsidiary of Watts, headquartered in China. Watts Valve Changsha Co., Ltd. produced and supplied large valve products for infrastructure projects in China are mostly developed, constructed, and owned by state-owned entities ("Project SOEs"). Project SOEs routinely retain state-owned design institutes to assist in the design and construction of their projects.

According to the SEC's order, from 2006 to 2009, employees of Watts Valve Changsha made improper payments to employees of certain design institutes to influence the design institutes to recommend CWV valve products to Project SOEs and to create design specifications that favored CWV valve products. CWV's improper payments generated profits for Watts of more than \$2.7 million. These payments were improperly recorded in CWC's books and records as sales commissions. Watts failed to devise and maintain a system of internal accounting controls sufficient to prevent and detect the payments. Respondent Leesen Chang, approved many of the payments to the design institutes and knew or should have known that the payments were improperly recorded on Watts' books as commissions.

Civil Disposition:

On October 13, 2011, without admitting or denying the SEC's allegations, Watts Water Technologies Inc. and Lessen Chang agreed to cease-and-desist from future violations of the books and records and internal controls provisions of the FCPA. In addition, Watts Water Technologies Inc agreed to pay disgorgement of \$2,755,815, prejudgment interest of \$820,791 and a civil money penalty of \$200,000. Leesen Chang also agreed to pay to the United States Treasury a civil money penalty of \$25,000.

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**15. Bid-Rigging in the International Market for Marine Hose**

Resulting Criminal Enforcement Action(s):

**A. United States v. Bridgestone Corporation (S.D. Tex., September 15, 2011)**

Entities and Individuals:

- Bridgestone Corporation, charged September 15, 2011.

Criminal Charges:

- Conspiracy:
  - to violate the Sherman Antitrust Act
  - to bribe foreign officials

Location and Time Period of Misconduct: Latin America, 1999-2007

Summary:

On September 15, 2011, a two-count criminal information was filed in U.S. District Court in Houston against Bridgestone, a Tokyo-headquartered manufacturer of marine hose and other industrial products, charging the company with conspiring to violate the Sherman Act and the Foreign Corrupt Practices Act (FCPA).

According to the court document, Bridgestone conspired to rig bids, fix prices and allocate market shares of marine hose in the United States and elsewhere and, separately, conspired to make corrupt payments to government officials in various Latin American countries to obtain and retain business. The Department of Justice said Bridgestone participated in the conspiracies from as early as January 1999, and continuing until as late as May 2007.

According to the antitrust charge, Bridgestone and its co-conspirators agreed to allocate shares of the marine hose market and to use a price list for marine hose in order to implement the conspiracy. The department also charged that, in order to secure sales of marine hose in Latin America, Bridgestone authorized and approved corrupt payments to foreign government officials employed at state-owned entities. Bridgestone's local sales agents agreed to pay employees of state-owned customers a percentage of the total value of proposed sales. When Bridgestone secured a sale, it would pay the local sales agent a "commission" consisting of not only the local sales agent's actual commission but also the corrupt payments to be made to employees of the state-owned customer. The local sales agent then was responsible for passing the agreed-upon corrupt payment to the employees of the customer.

*Criminal Disposition:*

On September 15, 2011, Bridgestone Corporation agreed to plead guilty for its role in conspiracies to rig bids and to make corrupt payments to foreign government officials in Latin America related to the sale of marine hose and other industrial products manufactured by the company and sold throughout the world. Pursuant to its plea agreement, Bridgestone Corporation was sentenced to a criminal fine of \$28 million.

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**16. Diageo plc**

Resulting Civil/Administrative Enforcement Action(s):

**A. In the Matter of Diageo plc (July 27, 2011)**

Entities and Individuals:

- Diageo plc, cease-and-desist order issued July 27, 2011.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: India, 2003-2009; Thailand, 2004-2008; South Korea, 2003-2006.

Summary:

On July 27, 2011, Diageo plc ("Diageo"), one of the world's largest producers of premium alcoholic beverages, entered into a settlement with the SEC regarding the company's alleged violations of the books and records and internal controls provisions of the FCPA. The charges against Diageo stemmed from more than six years of improper payments to government officials in India, Thailand, and South Korea. Specifically, the SEC found that London-based Diageo plc paid more than \$2.7 million through its subsidiaries to obtain lucrative sales and tax benefits relating to its Johnnie Walker and Windsor Scotch whiskeys, among other brands.

In India, from 2003 through mid-2009 Diageo made over \$1.7 million in illicit payments to hundreds of Indian government officials responsible for purchasing or authorizing the sale of its beverages. Increased sales from these payments yielded more than \$11 million in ill-gotten gains.

In Thailand, from 2004 through mid-2008, Diageo paid approximately \$12,000 per month – totaling nearly \$600,000 – to retain the consulting services of a Thai government and political party official. This official lobbied extensively on Diageo's behalf in connection with multi-million dollar pending tax and customs disputes, contributing to Diageo's receipt of certain favorable dispositions by the Thai government.

With respect to South Korea, in 2004, Diageo paid 100 million won (KRW) (over \$86,000) to a customs official as a reward for his role in the government's decision to grant Diageo significant tax rebates. Diageo also paid over \$100,000 in travel and entertainment expenses for South Korean customs and other government officials involved in these tax negotiations. Separately, Diageo made hundreds of gift payments totaling over \$230,000 to South Korean military officials in order to obtain and retain liquor business.

Diageo and its subsidiaries failed to account accurately for these illicit payments in their books and records. Exercising lax oversight, Diageo also failed to devise and maintain internal accounting controls sufficient to detect and prevent the payments

Civil Disposition:

On July 27, 2011, without admitting or denying the SEC's allegations, Diageo agreed to cease-and-desist from further violations of the books and records and internal controls provisions of the FCPA. In addition, Diageo agreed to pay \$11,306,081 in disgorgement, prejudgment interest of \$2,067,739, and a financial penalty of \$3,000,000.

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**17. Armor Holdings, Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re Armor Holdings, Inc. (July 13, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Armor Holdings, Inc. (D.D.C., July 13, 2011)**

Entities and Individuals:

- Armor Holdings, Inc., non-prosecution agreement and civil complaint filed July 13, 2011.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: United Nations, 2001-2007.

Summary:



On July 13, 2011, Armor Holdings, Inc, which was a Delaware corporation headquartered in Jacksonville, Florida, whose operating subsidiaries specialized in the manufacture and sale of military, law enforcement, and personnel safety equipment, entered into a two-year non-prosecution agreement with the Department of Justice regarding alleged violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Armor Holding in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

According to the agreements, Armor Holding's U.K. subsidiary, Armor Products International, Ltd. ("API"), wired at least 92 payments, totaling over \$200,000, in commissions to a third party sales agent. Armor Holdings knew that a portion of these payments would be offered to a United Nations procurement official to induce the official to award two separate U.N. contracts to API. In addition, agents of Armor Holdings caused API to enter into a sham consulting agreement with the intermediary for purportedly providing legitimate services in connection with the sale of goods to the U.N. API ultimately received contracts for the sale of approximately \$6 million of body armor, which resulted in a total profit to API of approximately \$1 million.

The record additionally shows that Armor acknowledged it falsely recorded the commission payments in its books and records. The company further admitted to keeping off its books and records approximately \$4.4 million in additional payments to agents and other third-party intermediaries used by Armor Holdings Product Group, a wholly owned subsidiary of Armor, to assist it in obtaining business from foreign government customers. Armor Holdings generated more than \$7.1 million in improper revenue and \$1.5 million in improper profits from the illegal conduct of its subsidiaries between 2001 and 2007.

*Criminal Disposition:*

On July 13, 2011, Armor Holdings, Inc., entered into a two-year non-prosecution agreement with the Department of Justice. As part of this agreement, Armor was required to pay a criminal penalty of \$10.29 million, as well as to continue implementing rigorous internal controls and continue cooperating fully with the Department. Due to Armor's implementation of BAE's due diligence protocols and review processes, its application of BAE's compliance policies and internal controls to all Armor businesses, its extensive remediation and improvement of its compliance systems and internal controls, as well as the enhanced compliance undertakings included in the agreement, Armor was not required to retain a corporate monitor. However, Armor was required to report to the Department on implementation of its remediation and enhanced compliance efforts every six months for the duration of the agreement.

*Civil Disposition:*

As part of its settlement with the SEC, Armor Holdings, Inc. consented to the entry of a permanent injunction against further violations of the FCPA and agreed to pay \$1,552,306 in disgorgement, \$458,438 in prejudgment interest, and a civil penalty of \$3,680,000.

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**18. Tenaris S.A.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Tenaris S.A. (May 17, 2011)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. In Re Tenaris S.A. (May 17, 2011)**

*Entities and Individuals:*

- Tenaris, S.A., non-prosecution agreement with the DOJ and deferred prosecution agreement with the SEC announced May 17, 2011.

*Criminal Charges:*

- Bribery of foreign officials
- Falsification of books and records

*Civil Charges:*

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

*Location and Time Period of Misconduct:* Uzbekistan, 2006-2008.

*Summary:*

On May 17, 2011, Tenaris, S.A., a publicly traded corporation headquartered in Luxembourg and a global manufacturer and supplier of steel pipe products and related services to the oil and gas industry, entered into a two-year non-prosecution agreement (NPA) with the Department of Justice, which alleged that the company had committed violations of the anti-bribery and books and records provisions on the FCPA. On the same date, Tenaris entered into a two-year deferred prosecution agreement (DPA) with the SEC in order to resolve allegations of violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. This enforcement action marked the first-ever use of a DPA to facilitate and reward cooperation in a SEC investigation.

According to court records, between 2006-2007, Tenaris bid on a series of contracts with OJSC O'ztashqineftgaz (OAO), a state-controlled oil and gas production company in Uzbekistan, to supply OAO with pipeline for use in the development and production of oil and natural gas in Uzbekistan. To help Tenaris bid on certain contracts with OAO, the company acquired an agent who provided the company with the bid information of competitors, which the agent obtained, from officials at OAO's tender department. Regional sales personnel at Tenaris subsequently used this confidential competitor bid information to submit revised bids in order to increase the likelihood of Tenaris being awarded the underlying contracts.

The records indicate that Tenaris paid the agent 3.5 percent of the value of four separate contracts they were awarded, equaling approximately \$32,140, through an intermediary bank. It is alleged that Tenaris was aware that a portion of the commissions paid to the agent would be used to pay OAO officials for, opening competitors' bids, providing confidential bid information to Tenaris, and replacing Tenaris's original bids with its revised bids. Tenaris's total profit from the four contracts was approximately \$4,786,438.

In or about March 2009, a third party disclosed to Tenaris that it had become aware of the improper payments made by the company. Tenaris then voluntarily disclosed this information regarding the company's conduct to the Department of Justice. At that time, Tenaris conducted an internal investigation, provided thorough, real-time cooperation to the Department and the SEC and undertook extensive remediation, including voluntary enhancements to its compliance program.

According to the NPA, Tenaris admitted that its employees and agents offered and made improper payments to officials of OAO, and failed to record such payments accurately in company books and records. The SEC's DPA further alleges that Tenaris failed to maintain internal controls to ensure that the transactions in Uzbekistan were properly authorized by management and that the financial statements were prepared in conformity with generally accepted accounting principles and in compliance with provisions of the FCPA.

*Criminal Disposition:*

On May 17, 2011, Tenaris, S.A., entered into a two-year non-prosecution agreement with the Department of Justice and was ordered to pay a \$3.5 million criminal penalty.

Civil Disposition:

On May 17, 2011, without admitting or denying the SEC's allegations, Tenaris, S.A., entered into a two-year deferred prosecution agreement with the SEC and agreed to pay \$5,428,338 in disgorgement and prejudgment interest. Tenaris is the first company to enter into a DPA with the SEC, whereby the SEC agreed to refrain from prosecuting Tenaris in a civil action if the company complies with certain undertakings regarding its FCPA compliance program and continues to fully cooperate with the SEC in its investigation.

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**19. Rockwell Automation, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

**A. In the Matter of Rockwell Automation, Inc. (May 3, 2011)**

Entities and Individuals:

- Rockwell Automation, Inc., cease-and-desist order issued May 3, 2011.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 2003-2006.

Summary:

On May 3, 2011, Rockwell Automation, Inc. (Rockwell), a global company engaged in the design and manufacturing of industrial automation products and services, entered into a settlement with the SEC regarding the company's alleged violations of the books and records and internal controls provisions of the FCPA. These charges stemmed from the alleged conduct of Rockwell Automation Power Systems (Shanghai) Ltd. ("RAPS-China"), a wholly-owned subsidiary of Rockwell, headquartered in Shanghai, China. During 2003, RAPS-China opened a manufacturing facility in Shanghai. Among other products, RAPS manufactured a Controlled Start Transmission ("CST"), which is used in the mining industry. The CST product was sold by RAPS-China primarily to Chinese government-owned coal mining and processing plants.

According to the SEC's order, from 2003 to 2006, RAPS-China paid approximately \$615,000 to employees of Chinese Design Institutes, which were typically state-owned enterprises that provided design engineering and technical integration services that can influence contract awards by end-user state-owned customers. These payments made through third-party intermediaries at the request of Design Institute employees and at the direction of RAPS-China's Marketing and Sales Director. In addition, from 2003 to 2006, employees of RAPS-China paid approximately \$450,000 to fund trips not directly related to business purposes for employees of Design Institutes and state-owned customers. These trips were improperly recorded in Rockwell's books and records as business expenses, without any designation that there were reasons not directly connected to the negotiation or execution of contracts or to the promotion of the company's products.

The SEC's order also notes that Rockwell netted approximately \$1.7 million in profits on sales contracts with end-user Chinese government-owned companies that were associated with payments to the Design Institutes.

Civil Disposition:

As part of its settlement with the SEC, Rockwell was ordered to cease-and-desist from committing or causing any violations and any future violations of books and records and internal controls violations of the FCPA. Rockwell was also ordered to pay disgorgement of \$1,771,000, prejudgment interest of \$590,091, and a civil money penalty of \$400,000.

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**20. Johnson & Johnson**

Resulting Criminal Enforcement Action(s):

**A. United States v. DePuy, Inc. (D.D.C., April 8, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Johnson & Johnson (D.D.C., April 8, 2011)**

Entities and Individuals:

- DePuy, Inc., charged April 8, 2011.
- Johnson & Johnson, deferred prosecution agreement and civil complaint filed April 8, 2011.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Greece, 1997-2006; Poland, 2000-2007; Romania, 2005-2008; Iraq, 2000-2003.

Summary:

On April 8, 2011, Johnson & Johnson (J&J) entered into a deferred prosecution agreement with the Department of Justice that included the filing of charges against DePuy, Inc., a wholly-owned subsidiary of Johnson & Johnson (J&J) and global manufacturer and supplier of orthopedic medical devices headquartered in Warsaw, Indiana, of one count of conspiracy to violate the anti-bribery and books and records provisions of the FCPA, as well as one substantive count of violating the FCPA's anti-bribery provisions. On the same date, the SEC filed a settled civil complaint in the U.S. District Court of the District of Columbia, charging J&J with violating the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against J&J and its subsidiary relate to a series of schemes to pay bribes to officials in various countries from approximately 1997 to 2008, including Greece, Poland, Romania, and Iraq.

Bribery of Greek Officials from 1997-2006:

According to court records, from approximately 1997 to 2006, DePuy, and its subsidiaries and employees, authorized the payment, directly or indirectly, of approximately \$16.4 million in cash to two Greek agents, knowing that a significant portion was used to pay cash incentives to healthcare providers who work at publicly-owned hospitals ("HCPs") to induce them to purchase DePuy's line of medical

devices. Greece has a national healthcare system wherein most Greek hospitals are publicly owned and operated. HCPs who work at these publicly-owned hospitals in Greece are government employees, providing health care services in their official capacities and are “foreign officials” as that term is defined in the FCPA. In addition to the payments by Greek agents, from approximately 2002 to 2006, approximately €500,000 was withdrawn by a DePuy employee and repaid within days. These withdrawals were used to cover payments owed to HCPs by the agents but not yet paid. According to the SEC’s complaint, J&J earned \$24,258,072 in profits on sales obtained through this bribery scheme. In order to conceal the bribe payments, J&J and its subsidiaries falsely recorded the payments in their books and records as “commissions,” “support,” or “professional education” payments.

*Bribery of Polish Officials from 2000-2007:*

Similar to Greece, Poland has a national healthcare system whereby most Polish hospitals are owned and operated by the government and most Polish HCPs are government employees providing health care services in their official capacities. Therefore, most HCPs in Poland are “foreign officials” as defined by the FCPA.

According to court records, employees of J&J Poland, a J&J subsidiary, made payments and provided things of value to publicly-employed Polish HCPs, in the form of “civil contracts,” travel sponsorships, and donations of cash and equipment, to corruptly influence the decisions of HCPs on tender committees to purchase medical products from J&J Poland. Between 2000 and 2006, there were approximately 4,400 civil contracts for which the company paid HCPs approximately \$3.65 million, some of which were used to make improper payments to HCPs, including direct payments and travel, all made to induce purchase of J&J products. In addition to the civil contracts, J&J Poland sponsored some publicly-employed Polish HCPs to attend conferences in order to corruptly influence them, in their official capacities as members of tender committees, in order to induce HCPs to select, or favorably influence the selection of J&J Poland as the winning supplier in tender processes. In total, from in or around 2000 to in or around 2007, J&J Poland and its employees authorized the payment, directly or indirectly, of approximately \$775,000 in improper payments, including direct payments and travel, to publicly-employed Polish HCPs to induce the purchase of J&J products.

*Bribery of Romanian Officials from 2005-2008:*

The national healthcare system in Romania is almost entirely state-run. The healthcare system is funded by the National Health Care Insurance Fund (“CNAS”), to which employers and employees make mandatory contributions. Most Romanian hospitals are owned and operated by the government and most HCPs in Romania are government employees. Therefore, most HCPs in Romania are “foreign officials” as defined by the FCPA. According to court records, from at least 2005 through 2008, J&J Romania employees made arrangements with J&J Romania distributors for the distributors, on behalf of J&J Romania, to provide cash payments and gifts, including laptops, electronics and other gifts, to publicly-employed Romanian HCPs in exchange for prescribing certain pharmaceuticals manufactured by J&J subsidiaries and operating companies. Specifically, J&J employees worked with distributors to deliver envelopes of cash and gifts to the publicly-employed Romanian HCPs in exchange for prescriptions. The HCP then issued a prescription and gave it directly to the distributor, who would then deliver the drug and a percentage of the price to the doctor. The HCP kept the cash and gave the drug directly to the patient. The distributor then took the prescription and had it approved by the local state insurance office, before delivering it to the pharmacy. The pharmacy then paid the distributor for the drug and submitted the prescription for reimbursement. In total, from approximately July 2005 through mid-2008, J&J Romania and its employees authorized the payment, directly or indirectly, of approximately \$140,000 in incentives to publicly-employed Romanian HCPs to induce the purchase of pharmaceuticals manufactured by J&J subsidiaries and operating companies.

*Bribery of Iraqi Officials under the United Nations Oil-for-Food Program (OFFP):*

J&J participated in the OFFP through two of its subsidiaries, Cilag AG International (Cilag) and Janssen Pharmaceutica N.V. (Janssen). According to court records, between 2000 and 2003, Janssen and Cilag were awarded 18 contracts for the sale of pharmaceuticals to the Iraqi Ministry of Health State Company for Marketing Drugs and Medical Appliances (“Kimadia”) under the OFFP, with a total contract value of approximately \$9.9 million. Janssen and Cilag secured these contracts through the payment of approximately \$857,387 in kickbacks to the government of Iraq through its agent in Lebanon. J&J’s total profits on the contracts were \$6,106,255. J&J’s books and records did not reflect the true nature of the payments made to the Iraqi government.

*Criminal Disposition:*

On April 8, 2011, J&J entered into a three-year deferred prosecution agreement with the Department of Justice in order to resolve both the criminal charges filed against DePuy, Inc. and additional criminal conduct referenced in the Statement of Facts attached to the agreement. Under the terms of the agreement, J&J was required to pay a criminal penalty of \$21.4 million. J&J received a reduction in its criminal fine as a result of its cooperation in the ongoing investigation of other companies and individuals. Due to J&J's pre-existing compliance and ethics programs, extensive remediation, and improvement of its compliance systems and internal controls, as well as the enhanced compliance undertakings included in the agreement, J&J was not required to retain a corporate monitor. However, J&J must report to the Department on implementation of its remediation and enhanced compliance efforts every six months for the duration of the agreement.

*Civil Disposition:*

On April 8, 2011, without admitting or denying the SEC's allegations, J&J reached a settlement with the SEC in which it agreed to pay \$38,227,826 disgorgement and \$10,438,490 in prejudgment interest. J&J also consented to the entry of a court order permanently enjoining the company from future violations of the anti-bribery, books and records, and internal controls violations of the FCPA.

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**21. Comverse Technology, Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Comverse Technology, Inc. (April 7, 2011)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Comverse Technology, Inc. (E.D.N.Y., April 7, 2011)**

*Entities and Individuals:*

- Comverse Technology, Inc., non-prosecution agreement announced and civil complaint filed April 7, 2011.

*Criminal Charges:*

- Falsification of books and records

*Civil Charges:*

- Falsification of books and records
- Internal controls violations

*Location and Time Period of Misconduct:* Athens, Greece, 2003-2006.

*Summary:*

On April 7, 2011, Comverse Technology, Inc. (CTI), which is headquartered in New York City and is a global provider of software and software systems for communications and billing services, entered into a non-prosecution agreement with the Department of Justice. The non-prosecution agreement related to CTI's alleged violations of the books and records provisions of the FCPA with regard to certain improper payments in Greece. On the same date, the SEC filed a settled civil complaint against CTI in the U.S. District Court for the Eastern District of New York, charging the company with violations of the books and records and internal controls provisions of the FCPA.

According to the non-prosecution agreement and the SEC's complaint, CTI violated the books and records provisions of the FCPA by failing to record accurately certain improper payments that were made

between 2003 and 2006 by employees and a third-party agent of Comverse Inc. subsidiaries to individuals connected to OTE, a Greek telecommunications provider that is partially owned by the Greek Government, in order to obtain purchase orders. The payments, totaling approximately \$536,000, were inaccurately characterized as legitimate agent commissions in the books and records of Comverse Ltd., a wholly owned subsidiary of Comverse Inc. that is based in Tel Aviv, Israel. These payments allegedly resulted in contracts worth approximately \$10 million in revenues and ill-gotten gain of approximately \$1.2 million.

Additionally, the SEC's complaint alleged that CTI failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions at all levels of the organization were properly recorded. For example, neither CTI nor Comverse Ltd. had a process, formal or otherwise, for conducting due diligence of sales agents or for the independent review of agent contracts outside the sales departments.

*Criminal Disposition:*

On April 7, 2011, Comverse Technology entered into a two year non-prosecution agreement with the Department of Justice. As part of this agreement, CTI was required to pay a criminal penalty of \$1.2 million, fully cooperate with investigations by law enforcement authorities of the company's corrupt payments, and continue the implementation of rigorous internal controls.

*Civil Disposition:*

On April 7, 2011, without admitting or denying the SEC's allegations, CTI consented to a conduct-based injunction that prohibits the company from having books and records that do not accurately reflect, or from having internal controls that do not prevent or detect, any illegal payments made to obtain or retain business. In addition, CTI consented to pay \$1,249,614 in disgorgement and \$358,887 in prejudgment interest.

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## **22. Ball Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. In the Matter of Ball Corporation (March 24, 2011)**

*Entities and Individuals:*

- Ball Corporation, cease-and-desist order issued March 24, 2011.

*Civil Charges:*

- Falsification of books and records
- Internal controls violations

*Location and Time Period of Misconduct:* Argentina, 2006-2007.

*Summary:*

On March 24, 2011, Ball Corporation, an Indiana corporation based in Broomfield, Colorado, which manufactures metal packaging for beverages, foods and household products, entered into a settlement with the SEC pertaining to the company's alleged violations of the books and records and internal controls provisions of the FCPA.

According to the SEC's cease-and-desist order, after Ball acquired an Argentine company, Fornamental, S.A. in March 2006, certain accounting personnel at Ball learned that Fornamental employees may have made questionable payments and caused other compliance problems before the acquisition. Despite learning of these payments after the acquisition, Ball failed to take sufficient action to ensure that such activities did not recur at Fornamental.



Within months of Ball's acquisition of Fornamental, two Fornamental executives –the then-Fornamental President and then-Fornamental Vice President of Institutional Affairs—authorized improper payments to Argentine officials. Specifically, in the period between July 2006 and October 2007, Fornamental's senior officers authorized at least ten unlawful payments totaling approximately \$106,749 to Argentine government officials. These payments were intended to induce government custom officials to circumvent Argentine laws prohibiting the importation of prohibited used machinery, equipment and parts and also to secure the exportation of raw materials at reduced tariffs.

Fornamental's bribes were funneled through a third party customs agent, who often included the bribes on invoices sent to the company. The bribes often appeared on the invoices as separate line items described inaccurately as "fees for customs assistance," "customs advisory services," "verification charge," or simply "fees." According to the SEC's order, the true nature of these payments was then mischaracterized as ordinary business expenses on Fornamental's books and records.

Civil Disposition:

Ball Corporation was ordered to cease-and-desist from committing or causing any violations and any future violations of the books and records and internal controls provisions of the FCPA. In addition, the company was ordered to pay a civil penalty of \$300,000.

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**23. International Business Machines Corporation (IBM)**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. International Business Machines Corporation (D.D.C., March 18, 2011)**

Entities and Individuals:

- International Business Machines, settled civil complaint filed March 18, 2011.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: South Korea, 1998-2003; China, 2004-2009.

Summary:

On March 18, 2011, the SEC filed a settled civil complaint in the United States District Court for the District of Columbia, against International Business Machines Corporation (IBM), a New York corporation that develops and manufactures information technology products and services worldwide, charging violations of the books and records, and internal controls provisions of the FCPA. The civil charges against IBM relate to a series of schemes to pay bribes to officials in South Korea and China, from approximately 1998-2009.

Bribery of South Korean Officials from 1998-2003:

The SEC's alleges that from 1998 to 2003, employees of IBM Korea, Inc., an IBM subsidiary, and LG IBM PC Co., Ltd., a joint venture in which IBM held a majority interest, paid cash bribes and provided improper gifts and payments of travel and entertainment expenses to various government officials in South Korea in order to secure the sale of IBM products. Court records indicate that IBM-Korea and LG-IBM employees paid a total of approximately \$135,558 and \$71,599 in cash bribes, respectively.

The complaint alleges six specific instances of improper payments made to South Korean government entities ("SKGE") by the IBM subsidiaries. The record indicates that between 1998 and 2002, IBM Korea managers made cash payments totaling KRW 102 million (\$97,372) to SKGE 1 officials who were responsible for purchasing mainframe computers for SKGE 1. The cash payments were made in

exchange for SKGE 1 maintaining IBM Korea as their computer supplier and to help an IBM Korea business partner win contract bids.

In 2002, it is alleged that an IBM Korea manager paid KRW 40 million (\$38,186) to a manager of the government controlled SKGE 2 which resulted in IBM Korea winning a contract with SKGE 2 worth approximately KRW 13.7 billion (\$13 million).

The complaint provides that in 2000, a Special Sales Manager for LG IBM directed his business partner to “express his gratitude” to a SKGE 3 official by providing KRW 15 million (\$14,320) to that official. In turn, the LG-IBM business partner was “adequately compensated by generous installation fees” paid by LG-IBM. The SEC additionally alleges that these transactions were not accurately recorded within LG-IBM’s books and records. Another LG-IBM employee is alleged to have made an improper payment of KRW 10 million (\$9,546) to a SKGE 4 manager. The purpose of the bribe was to win a computer supply contract valued at KRW 1,448,700,000 (\$1,383,007).

In 2002, a bribe in the amount of KRW 20 million (\$19,093) is alleged to have been made to a SKGE 5 official in exchange for providing LG-IBM with certain confidential information regarding the product specifications on SKGE 5’s request for procurement and which resulted in LG-IBM winning a contract which paid KRW 1.74 billion (\$1.7 million).

The final specific allegation in the SEC’s complaint with regard to South Korea government officials indicates that a Direct Sales Manager of LG-IBM entertained and provided gifts to employees of SKGE 6. These included payments to the bank account of a "hostess in a drink shop," as well as on travel and entertainment expenses for employees of SKGE 6. The purposes of these improper payments were to persuade employees of SKGE 6 to purchase IBM products. LG-IBM is also suspected to have provided free computers and computer equipment to key decision makers at ten other SKGEs to entice them to purchase IBM products or to provide information to assist LG-IBM in the bidding process.

#### *Bribery of Chinese Officials from 2004-2009:*

According to court records, between 2004 to early 2009, IBM China, a Hong Kong company owned by IBM, employees created slush funds at local travel agencies in China that were used to pay for overseas and other travel expenses incurred by Chinese government officials. In addition, IBM-China employees created slush funds at its business partners to provide a cash payment and improper gifts, such as cameras and laptop computers, to Chinese government officials. It is alleged that IBM failed to record accurately these payments in its books and records and that the company’s internal controls failed to detect at least 114 violations.

#### Civil Disposition:

On March 18, 2011, without admitting or denying the SEC’s allegations, IBM consented to the entry of a final judgment that permanently enjoins the company from violating the books and records and internal control provisions of the FCPA. In addition, IBM consented to pay disgorgement of \$5,300,000, \$2,700,000 in prejudgment interest, and a \$2,000,000 civil penalty.

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## **24. Tyson Foods, Inc.**

### Resulting Criminal Enforcement Action(s):

#### **A. United States v. Tyson Foods, Inc. (D.D.C., February 10, 2011)**

### Resulting Civil/Administrative Enforcement Action(s):

#### **B. SEC v. Tyson Foods, Inc. (D.D.C., February 10, 2011)**

### Entities and Individuals:

- Tyson Foods Inc., deferred prosecution agreement and civil complaint filed February 10, 2011.

#### Criminal Charges:

- Conspiracy :
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials

#### Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Mexico, 2004-2006.

#### Summary:

On February 10, 2011, the Department of Justice charged Tyson Foods, Inc. (Tyson Foods), which produces prepared food products and is headquartered in Springdale, Arkansas, with one count of conspiracy to violate the anti-bribery and books and records violations of the FCPA, as well as one substantive count of violating the FCPA's anti-bribery provisions. On the same date, the SEC filed a settled civil complaint against Tyson Foods in the U.S. District Court of the District of Columbia, charging the company with violating the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Tyson Foods stem from an alleged scheme to make improper payments to government-employed veterinarians in Mexico.

According to court records, Tyson Foods' subsidiary, Tyson de Mexico, made improper payments during fiscal years 2004 to 2006 to two Mexican government veterinarians responsible for certifying its chicken products for export sales. Tyson de Mexico initially concealed the improper payments by putting the veterinarians' wives on its payroll while they performed no services for the company. The wives were later removed from the payroll and payments were then reflected in invoices submitted to Tyson de Mexico by one of the veterinarians for "services." Tyson de Mexico paid the veterinarians a total of \$100,311. It was not until two years after Tyson Foods' officials first learned about the subsidiary's illicit payments that its counsel instructed Tyson de Mexico to cease making the payments.

The SEC alleges that in connection with these improper payments, Tyson Foods failed to keep accurate books and records and failed to implement a system of effective internal controls to prevent the salary payments to phantom employees and the payment of illicit invoices. The improper payments were improperly recorded as legitimate expenses in Tyson de Mexico's books and records and included in Tyson de Mexico's reported financial results for fiscal years 2004, 2005 and 2006. Tyson de Mexico's financial results were, in turn, a component of Tyson Foods' consolidated financial statements filed with the SEC for the years 2004, 2005, and 2006.

#### Criminal Disposition:

On February 10, 2011, Tyson Foods entered into a two-year deferred prosecution agreement with the Department of Justice. The agreement requires that Tyson pay a \$4 million criminal penalty, implement rigorous internal controls, and cooperate fully with the Department. The agreement recognized Tyson's voluntary disclosure and thorough self-investigation of the underlying conduct.

#### Civil Disposition:

As part of its settlement with the SEC, without admitting or denying the SEC's allegations, Tyson Foods consented to the entry of a final judgment ordering disgorgement plus pre-judgment interest of more than \$1.2 million and permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA.

**25. Maxwell Technologies, Inc.**

**Resulting Criminal Enforcement Action(s):**

**A. United States v. Maxwell Technologies, Inc. (S.D. Cal., January 31, 2011)**

**Resulting Civil/Administrative Enforcement Action(s):**

**B. SEC v. Maxwell Technologies, Inc. (D.D.C., January 31, 2011)**

**Entities and Individuals:**

- Maxwell Technologies, Inc., deferred prosecution agreement and civil complaint filed January 31, 2011.

**Criminal Charges:**

- Bribery of foreign officials
- Falsification of books and records

**Civil Charges:**

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

**Location and Time Period of Misconduct: China, 2002-2009.**

**Summary:**

On January 31, 2011, the Department of Justice charged Maxwell Technologies, Inc. (Maxwell), a publicly-traded manufacturer of energy-storage and power-delivery products based in San Diego, with one count each of violating the anti-bribery and books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint, alleging that the company had violated the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Maxwell stem from a nearly seven year scheme to pay bribes to Chinese government officials.

According to court documents, Maxwell's wholly-owned Swiss subsidiary, Maxwell S.A., engaged a Chinese agent to sell Maxwell's products in China. From at least July 2002 through May 2009, Maxwell S.A. paid more than \$2.5 million to its Chinese agent to secure contracts with Chinese customers, including contracts for the sale of Maxwell's high-voltage capacitor products to state-owned manufacturers of electrical-utility infrastructure. The agent in turn used Maxwell S.A.'s money to bribe officials at the state-owned entities in connection with the sales contracts. Maxwell S.A. paid its Chinese agent approximately \$165,000 in 2002 and increased the payments to the agent to \$1.1 million in 2008. In its books and records, Maxwell mischaracterized the bribes as sales-commission expenses.

According to court documents, the illicit payments were made with the knowledge and tacit approval of certain former Maxwell officials. As described in the SEC's complaint, former management at Maxwell knew of the bribery scheme in late 2002 when an employee indicated in an e-mail that a payment made in connection with a sale in China appeared to be "a kick-back, pay-off, bribe, whatever you want to call it, . . . in violation of US trade laws." A U.S.-based Maxwell executive replied that "this is a well know[n] issue" and he warned "[n]o more e-mails please."

As a result of this bribery scheme, Maxwell SA was awarded contracts that generated over \$15 million in revenues and \$5.6 million in profits for Maxwell. These sales and profits helped Maxwell offset losses that it incurred to develop new products now expected to become Maxwell's future source of revenue growth.

*Criminal Disposition:*

On January 31, 2011, Maxwell entered into a three-year deferred prosecution agreement with the Department of Justice. The agreement requires Maxwell to pay a criminal penalty of \$8 million, to implement an enhanced compliance program and internal controls capable of preventing and detecting FCPA violations, to report periodically to the department concerning the company's compliance efforts, and to cooperate with the department in ongoing investigations.

*Civil Disposition:*

On January 31, 2011, without admitting or denying the SEC's allegations, Maxwell consented to the entry of a final judgment that permanently enjoins the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Maxwell was ordered to pay \$5,654,576 in disgorgement and \$696,314 in prejudgment interest under a payment plan. Maxwell was also required to comply with certain undertakings regarding its FCPA compliance program.

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**26. Innospec Inc.**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Innospec Inc. (D.D.C., March 17, 2010)**
- B. United States v. Ousama Naaman (D.D.C., August 7, 2008)**

*Resulting Civil/Administrative Enforcement Action(s):*

- C. SEC v. Paul W. Jennings (D.D.C., January 24, 2011)**
- D. SEC v. David P. Turner, et al. (D.D.C., August 5, 2010)**
- E. SEC v. Innospec Inc. (D.D.C., March 18, 2010)**

*Entities and Individuals:*

- Innospec Inc. (Innospec), charged March 17, 2010; civil complaint filed March 18, 2010.
- Ousama Naaman, Innospec's agent, indicted August 7, 2008; civil complaint filed August 5, 2010.
- David P. Turner, Business Director, civil complaint filed August 5, 2010.
- Paul W. Jennings, CEO, civil complaint filed January 24, 2011.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to falsify books and records (all defendants)
  - to commit wire fraud (all defendants)
- Bribery of foreign officials (all defendants)
- Falsification of books and records (Innospec)
- Wire fraud (Innospec)

*Civil Charges:*

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)
- Aiding and abetting Innospec's falsification of books and records (Turner, Naaman, Jennings)
- Aiding and abetting Innospec's internal controls violations (Turner, Naaman, Jennings)

*Location and Time Period of Misconduct:* Iraq, 2000-2008; Indonesia, 2000-2005; Cuba, 2001-2004.

Summary:

On August 7, 2008, Ousama Naaman, a Canadian/Lebanese dual national, who served as Innospec Inc.'s agent in the Middle East, was indicted for his alleged participation in an eight-year conspiracy to defraud the OFFP and to bribe Iraqi government officials in connection with the sale of a chemical additive used in the refining of leaded fuel. Naaman was charged with one count of conspiracy to commit wire fraud and to violate the FCPA and two counts of violating the FCPA. On March 17, 2010, Innospec was charged in a twelve-count criminal information with conspiracy, foreign bribery in violation of the FCPA, foreign bribery related accounting misconduct in violation of the FCPA, and wire fraud. On March 18, 2010, the SEC filed a settled civil complaint against Innospec, charging the company with violating the FCPA's anti-bribery, internal controls, and books and records provisions.

The SEC subsequently filed a civil complaint against Naaman and David Turner, Innospec's former Business Director, on August 5, 2010. On January 24, 2011, the SEC filed a civil complaint against Paul W. Jennings, Innospec's former CEO. In its complaints, the SEC charged Naaman, Turner, and Jennings with violating the anti-bribery, books and records, and internal controls provisions of the FCPA, as well as with aiding and abetting Innospec's books and records and internal controls violations.

*Bribery of Iraqi Officials under the United Nations Oil-for-Food Program (OFFP):*

According to court documents, from 2000 to 2003, Innospec's Swiss subsidiary, Alcor, was awarded five contracts valued at more than €40 million to sell tetraethyl lead (TEL) to refineries run by the Iraqi Ministry of Oil (MoO) under the OFFP. To obtain these contracts, Innospec, Alcor, Turner and Naaman, paid or promised to pay at least \$4 million in kickbacks to the former Iraqi government. As Innospec's Business Director, Turner allegedly authorized or approved these kickback payments. For his role in routing the kickbacks to Iraqi officials, Naaman received 2% of the contract value, in addition to the 2% commission he was paid for securing the contracts. In order to cover the cost of the kickbacks to the Iraqi officials, Innospec would inflate its prices in contracts approved by the OFFP.

When later questioned by Innospec's internal auditors about the nature of the commission payments that were made to Naaman under the OFFP, Turner allegedly made a series of false statements and concealed the fact that the commission payments to Naaman included kickbacks to the Iraqi government in return for contracts.

*Bribery of Iraqi Officials from 2004 to 2008:*

According to the SEC's complaints, Jennings learned of the company's longstanding practice of paying bribes to win orders for sales of TEL in mid- to late 2004 while serving as the CFO. After Jennings became CEO in 2005, he and Turner continued to approve bribery payments to officials at the MoO. Ultimately, from 2004-2008, Innospec, Turner, Jennings, and Naaman paid more than \$3 million in bribes, in the form of cash, travel, gifts and entertainment, to officials of the MoO and the Trade Bank of Iraq to secure continued sales of TEL and to secure more favorable exchange rates on the sales contracts and letters of credit. Naaman subsequently provided Innospec with false invoices, on the basis of which Innospec reimbursed him for the bribes.

In addition to the bribe payments to secure sales of TEL, in 2006, Turner, Jennings, and other senior Innospec officials directed Naaman to pay a bribe of \$150,000 to officials within the MoO to ensure that a competing product manufactured by a different company failed a field test keeping the competing product out of the Iraqi market.

According to the complaints, Jennings and other senior Innospec officials also offered to pay nearly \$850,000 in bribes to Iraqi officials in order to secure a 2008 Long Term Purchase Agreement with the MoO. However, this agreement did not go forward due to the investigation and ultimate discovery by U.S. regulators of widespread bribery by Innospec.

*Bribery of Indonesian Government Officials:*

According to court documents, Turner and other senior Innospec officials also caused the payment of more than \$2.8 million in bribes to Indonesian government officials from at least 2000 to 2005 in order to win contracts worth more than \$48 million from state-owned oil and gas companies in Indonesia. Jennings allegedly became aware of and approved these payments beginning in mid- to late 2004.

*Illicit Sales of TEL to State-Owned Power Plants in Cuba:*

As part of its plea agreement, Innospec also admitted that, from 2001 to 2004, a subsidiary of the company sold nearly \$20 million in oil soluble fuel additives to state-owned Cuban power plants without a license from the Treasury Department's Office of Foreign Assets Control (OFAC), in violation of the Trading with the Enemy Act.

*Criminal Disposition:*

Naaman was arrested in Frankfurt, Germany on July 30, 2009. The Department of Justice succeeded in securing Naaman's extradition from the Federal Republic of Germany on April 30, 2010. On June 25, 2010, Naaman pleaded guilty to a superseding information charging him with one count of conspiracy to commit wire fraud, violate the FCPA, and falsify the books and records of a U.S. issuer, and one count of violating the FCPA. On December 22, 2011, Naaman was sentenced to 30 months' imprisonment followed by 36 months' supervised probation and ordered to pay a \$250,000 criminal penalty.

On March 18, 2010, Innospec pled guilty before District Judge Ellen Segal Huvelle in the U.S. District Court for the District of Columbia. As part of its plea agreement, Innospec agreed to pay a \$14.1 million criminal fine and retain an independent compliance monitor for a minimum of three years to oversee the implementation of a robust anti-corruption and export control compliance program.

In order to resolve related charges brought by the United Kingdom's Serious Fraud Office in connection with the Indonesian bribery, Innospec's British subsidiary, Innospec Ltd., pleaded guilty on March 18, 2010, in the Southwark Crown Court in London. Accordingly, Innospec Ltd. agreed to pay a criminal penalty of \$12.7 million.

On January 17, 2012, Turner pleaded guilty in the United Kingdom to four counts of conspiracy to corrupt and offer bribes to public officials and agents. His sentencing has not yet been scheduled.

*Civil Disposition:*

On the same day as its guilty plea, Innospec settled the civil complaint filed by the SEC by agreeing to disgorge \$60 million, with all but \$11.2 million waived due to the company's financial condition. In the SEC matter, Innospec was enjoined from future violations and ordered to retain an independent FCPA compliance monitor for three years. Innospec also agreed to pay \$2.2 million to resolve outstanding matters with OFAC.

Without admitting or denying the SEC's allegations, Turner, Naaman, and Jennings each consented to the entry of final judgments permanently enjoining them from future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA, as well as from aiding and abetting such violations. As part of his settlement with the SEC, Turner agreed to disgorge \$40,000. Naaman agreed to disgorge \$810,076 plus prejudgment interest of \$67,030, and pay a civil penalty of \$438,038, which would be deemed satisfied by a criminal order requiring him to pay a criminal fine that is at least equal to the civil penalty amount. Similarly, Jennings agreed to disgorge \$116,092 plus prejudgment interest of \$12,945, and pay a civil penalty of \$100,000.

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**27. Alcatel-Lucent, S.A.**

**Resulting Criminal Enforcement Action(s):**

- A. United States v. Alcatel-Lucent, S.A. (S.D. Fla., December 27, 2010)**
- B. United States v. Alcatel-Lucent France, S.A., *et al.* (S.D. Fla., December 27, 2010)**

**Resulting Civil/Administrative Enforcement Action(s):**

- C. SEC v. Alcatel-Lucent, S.A. (S.D. Fla., December 27, 2010)**

**Entities and Individuals:**

- Alcatel-Lucent, S.A., deferred prosecution agreement and settled civil complaint filed December 27, 2010.
- Alcatel-Lucent France, S.A., deferred prosecution agreement and settled civil complaint filed December 27, 2010.

**Criminal Charges:**

- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)

**Civil Charges:**

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

**Location and Time Period of Misconduct:** Costa Rica, 2001-2004; Honduras, 2002-2006; Taiwan, 2003-2004; Malaysia, 2004-2006.

**Summary:**

On December 27, 2010, Alcatel-Lucent, S.A. (Alcatel) and its subsidiary Alcatel-France, S.A. entered into a deferred prosecution agreement with the Department of Justice related to alleged violations of the books and records and internal controls provisions of the FCPA. On the same date, the SEC filed a settled civil complaint, in the U.S. District Court for the Southern District of Florida, to resolve charges that Alcatel-Lucent, S.A. violated the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Alcatel, a French headquartered corporation that is one of the world's largest providers of telecommunications equipment and services, stem from a five year scheme of paying bribes to foreign government officials to obtain or retain business in Latin America and Asia. All of the bribery payments were undocumented or improperly recorded as consulting fees in the books of Alcatel's subsidiaries and then consolidated into Alcatel's financial statements. The leaders of several Alcatel subsidiaries and geographical regions, including some who reported directly to Alcatel's executive committee, either knew or were severely reckless in not knowing about misconduct.

**Bribery of Costa Rican Government Officials:**

The Instituto Costarricense de Electricidad (ICE) is the Costa Rican government-owned company that provides telecommunications services, evaluates bids, and awards telecommunications contracts in Costa Rica.

According to court documents, in late 2000, Alcatel employees, Edgar Valverde and Christian Sapsizian, enlisted two consultant companies that had contacts at ICE. Alcatel paid commissions to the consultants, part of which, were used to bribe government officials in Costa Rica. This conduct went on from 2001 to 2004 and enabled Alcatel to obtain telecommunication contracts with ICE worth more than \$300 million, from which Alcatel profited more than \$23 million.



In addition, according to court documents, senior executives at Alcatel approved the retention of and payments to the consultants despite obvious indications that the consultants were performing little or no legitimate work and despite such alerts that the payments were unlawful, such as the large size of the commissions.

*Bribery of Honduran Government Officials:*

Similarly as with in Costa Rica, in 2002, Alcatel obtained a Honduran Consultant to assist the company in obtaining telecommunications contracts in the country. According to court documents, from 2002 to 2006, Alcatel executives knew that a significant portion of the money paid to the consultant was being paid to the family of a senior Honduran government official in exchange for favorable treatment of Alcatel. Alcatel also allegedly bribed other Honduran officials with cash payments and expensive trips without having any legitimate business purposes. As a result of the bribes paid, Alcatel obtain at least five telecommunication contracts valued at approximately \$48 million.

Additionally, according to court records, Alcatel failed to conduct adequate due diligence about the Honduran Consultant and did not uncover the relationship the consultant had with high ranking Honduran officials despite the number of red flags, including the fact the consultant had no experience in telecommunications.

*Bribery of Taiwan Government Officials:*

Taiwan Railway Administration (TRA), a Taiwanese government-owned authority, was responsible for awarding and administering public tenders for contracts to manufacture and install axle counting systems to facilitate rail traffic in Taiwan. TRA was an agency of Taiwan's Ministry of Transportation and Communications, a cabinet-level governmental body responsible for the regulation of transportation and communications networks and operations.

As with in Costa Rica and Honduras, it is alleged that Alcatel employees hired two Taiwanese Consultants to pressure TRA to act in Alcatel's favor in the bid process. Both consultants, hired by Alcatel, were used to funnel payments to Taiwanese legislators who had an influence in the award of the contract. According to court records, the bribes made through the consultants resulted in Alcatel obtaining a contract valued at approximately \$27 million.

*Bribery of Malaysian Government Officials:*

Telekom Malaysia is the Malaysian government-owned telecommunications company that provides telecommunications services, evaluates bids, and awards telecommunications contracts in Malaysia. According to the SEC's complaint, between 2004 and 2006, Alcatel personnel paid bribes to employees of Telekom Malaysia in exchange for non-public information, including important documents and budget information relating to ongoing bids and competitor pricing information. Alcatel's management allegedly consented to these payments. The bribes resulted in Alcatel obtaining a contract valued at approximately \$85 million.

*Criminal Disposition:*

On December 27, 2010, Alcatel and its subsidiary, entered into a deferred prosecution agreement with the Department of Justice. As part of this agreement, Alcatel was required to pay a criminal penalty of \$92 million and agreed to retain an independent compliance monitor for three years to oversee the company's implementation and maintenance of an enhanced FCPA compliance program.

*Civil Disposition:*

Without admitting or denying the SEC's allegations, Alcatel has consented to a court order permanently enjoining it from future violations of the FCPA. The company was also ordered to pay \$45.372 million in disgorgement of wrongfully obtained profits, and ordered to comply with certain undertakings including retaining an independent FCPA compliance monitor for three years.

**28. Latin Node Inc.**

**Resulting Criminal Enforcement Action(s):**

- A. United States v. Manuel Salvoch (S.D. Fla., December 17, 2010)**
- B. United States v. Juan Pablo Vasquez (S.D. Fla., December 17, 2010)**
- C. United States v. Jorge Granados, *et al.* (S.D. Fla., December 14, 2010)**
- D. United States v. Latin Node Inc. (S.D. Fla., March 23, 2009)**

**Entities and Individuals:**

- Latin Node Inc., charged March 23, 2009.
- Jorge Granados, CEO and Chairman of the Board, indicted December 14, 2010.
- Manuel Caceres, Vice-President of Business Development, indicted December 14, 2010.
- Manuel Salvoch, CFO, charged December 17, 2010.
- Juan Pablo Vasquez, Vice President of Sales, Vice President of Wholesale Division, and CCO, charged December 17, 2010.

**Criminal Charges:**

- Conspiracy:
  - to bribe foreign officials (all defendants except Latin Node)
  - to commit international money laundering (Granados, Caceres)
- Bribery of foreign officials (Latin Node, Granados, Caceres)
- International Money Laundering (Granados, Caceres)

**Location and Time Period of Misconduct:** Honduras, 2004-2007; Yemen, 2005-2006.

**Summary:**

On March 23, 2009, Latin Node Inc. (Latin Node) was charged with one count of violating the anti-bribery provisions of the FCPA in connection with improper payment in Honduras and Yemen. According to court documents, Latin Node was a privately held Florida corporation that provided wholesale telecommunications services using Internet protocol technology in a number of countries throughout the world, including Honduras and Yemen.

On December 14, 2010, Latin Node's former CEO and Vice President for Business Development, Jorge Granados and Manuel Caceres, were indicted by a Grand Jury in the Southern District of Florida on 19 counts of conspiracy, violations of the FCPA, and money laundering. Subsequently, on December 17, 2010, Manuel Salvoch, Latin Node's former CFO, and Juan Pablo Vasquez, a former senior commercial executive at Latin Node, were each charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA.

**Bribery of Honduran Officials:**

According to court records, in December 2005, Latin Node learned that it was the sole winner of an "interconnection agreement" with Empresa Hondureña de Telecomunicaciones (Hondutel), the wholly state-owned telecommunications authority in Honduras. The agreement permitted Latin Node to use Hondutel's telecommunications lines in order to establish a network between Honduras and the United States, and to provide long distance services between the two countries. According to court documents, Granados, Salvoch, Caceres and Vasquez agreed to a secret deal to pay bribes to Hondutel officials, including the general manager, a senior attorney for Hondutel and a minister of the Honduran government who became a representative on the Hondutel Board of Directors.

Accordingly, between September 2006 and June 2007, these executives paid or caused to be paid more than \$500,000 in bribes to the Honduran officials. In all, according to court documents filed in the case against Latin Node, between March 2004 and June 2007, the company paid or caused to be paid approximately \$1,099,889 in payments to third parties, knowing that some or all of those funds would be

passed on as bribes to officials of Hondutel. In addition to the payments for the interconnection agreement, Latin Node admitted that these payments were also, in part, intended to secure reduced call termination rates for the company's traffic.

Each of these illicit payments originated from Latin Node's Miami bank account, and many of the payments were concealed by laundering the money through Latin Node subsidiaries in Guatemala and through accounts in Honduras controlled by Honduran government officials.

*Bribery of Yemeni Officials:*

As part of its plea agreement Latin Node also admitted that it made a series of improper payments to Yemeni officials. Latin Node admitted that from approximately July 2005 through April 2006, the company made 17 payments totaling approximately \$1,150,654 to a third-party consultant with the knowledge that some or all of the money would be passed on to Yemeni officials in exchange for favorable interconnection rates in Yemen. Each of these payments was also made from Latin Node's Miami bank account. Company e-mails indicated that company executives believed that potential recipients of these payments included Yemeni government officials.

*Criminal Disposition:*

On April 7, 2009, Latin Node pleaded guilty before U.S. District Judge Paul Courtney Huck in the Southern District of Florida. As part of its plea agreement, Latin Node agreed to pay a \$2 million criminal fine during a three-year period.

Salvoch pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions on January 12, 2011. On June 6, 2012, he was sentenced, in a 5K1.1 downward departure, to 10 months' imprisonment, followed by 3 years' supervised release, which includes 6 months of home confinement, 35 hours of community service per week while in home confinement, and from 400-1200 hours of community service thereafter depending on whether he is employed or unemployed.

Vasquez pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions on January 21, 2011. On April 25, 2012, Vasquez was sentenced, in a 5K1.1 downward departure, to 3 years' probation, which includes 6 months' of home confinement and 500 hours of community service. He was also ordered to pay a criminal penalty of \$7,500.

On May 19, 2011, Granados pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions. On September 7, 2011, he was sentenced to 46 months in prison, followed by 2 years supervised release.

Caceres pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions on May 18, 2011. On April 19, 2012, Caceres was sentenced, in a 5K1.1 downward departure, to 23 months' imprisonment, followed by 1 year supervised release.

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**29. RAE Systems Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re RAE Systems Inc. (December 10, 2010)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. RAE Systems Inc. (D.D.C., December 10, 2010)**

*Entities and Individuals:*

- RAE Systems, Inc., non-prosecution agreement announced and civil complaint filed December 10, 2010.

*Criminal Charges:*

- Falsification of books and records

- Internal controls violations

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: People's Republic of China, 2005-2008.

Summary:

On December 10, 2010, RAE Systems, Inc. entered into a non-prosecution agreement with the Department of Justice regarding alleged violations of the books and records and internal controls provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against RAE Systems in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

RAE Systems, a publicly-traded United States corporation headquartered in San Jose, California, developed and manufactured rapidly deployable, multi-sensor chemical and radiation detection monitors and networks. According to court records, from 2004 to 2008, the company had significant operations in the People's Republic of China (PRC), and sold its products and services primarily through two subsidiaries organized as joint ventures with local Chinese entities: RAE-KLH (Beijing) Co. Limited (RAE-KLH) and RAE Coal Mine Safety Instruments (Fushun) Co. Ltd. (RAE Fushun). A significant number of RAE-KLH's and RAE Fushun's customers were PRC government departments and bureaus, and large state-owned agencies and instrumentalities, including regional fire departments, emergency response departments and entities under the supervision of the provincial environmental agency.

RAE Systems accepted responsibility for violating the internal controls and books and records provisions of the FCPA arising from and related to improper benefits corruptly paid by employees of RAE-KLH and RAE Fushun to foreign officials in the PRC. As a result of due diligence conducted by RAE Systems before acquiring the majority of the joint venture that became known as RAE-KLH, RAE Systems was aware of improper commissions, kickbacks and "under table greasing to get deals" by employees. Yet, according to information contained in the agreement, the company chose to implement internal controls only "halfway" so as not to "choke the sales engine and cause a distraction for the sales guys." As a result, improper payments continued at RAE-KLH. In acquiring the majority of RAE Fushun, RAE Systems did not conduct any pre-acquisition corruption due diligence in spite of a number of red flags. It was later confirmed that corrupt benefits were also being provided by RAE Fushun. In both instances, RAE Systems learned of corrupt practices at RAE-KLH and RAE Fushun and knowingly failed to implement effective systems of internal controls and failed to properly classify the improper payments in its books and records.

In addition to the internal controls and books and records violations, the SEC's complaint specifically alleged that employees of RAE-KLH and RAE Fushun paid approximately \$400,000 to Chinese government officials in violation of the FCPA's anti-bribery provisions. These employees typically made these illicit payments by obtaining cash advances from RAE-KLH and RAE Fushun accounting personnel. In all, these payments resulted in contracts worth approximately \$3 million in revenues and profits of \$1,147,800.

Criminal Disposition:

On December 10, 2010, RAE Systems, Inc., entered into a non-prosecution agreement with the Department of Justice. As part of this agreement, RAE Systems was required to pay a criminal penalty of \$1.7 million, fully cooperate with investigations by law enforcement authorities of the company's corrupt payments, adhere to a set of enhanced corporate compliance and reporting obligations, and to submit periodic reports to the department regarding RAE Systems' compliance with its obligations under the agreement.

Civil Disposition:

On December 10, 2010, RAE Systems reached a settlement with the SEC, in which RAE Systems consented to the entry of a permanent injunction against FCPA violations and agreed to pay \$1,147,800 in disgorgement and \$109,212 in prejudgment interest. RAE also agreed to comply with certain undertakings regarding its FCPA compliance program.

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**30. Bribery by Oil Services and Freight Forwarding Companies**

Resulting Criminal Enforcement Action(s):

- A. **United States v. Panalpina Inc. (S.D. Tex., November 4, 2010)**
- B. **United States v. Panalpina World Transport (Holding) Ltd. (S.D. Tex., November 4, 2010)**
- C. **United States v. Shell Nigeria Exploration and Production Company Ltd. (S.D. Tex., November 4, 2010)**
- D. **United States v. Transocean Inc. (S.D. Tex., November 4, 2010)**
- E. **United States v. Tidewater Marine International Inc. (S.D. Tex., November 4, 2010)**
- F. **United States v. Pride International Inc. (S.D. Tex., November 4, 2010)**
- G. **United States v. Pride Forasol S.A.S. (S.D. Tex., November 4, 2010)**
- H. **In Re Noble Corporation (November 4, 2010)**

Resulting Civil/Administrative Enforcement Action(s):

- I. **SEC v. Panalpina, Inc. (S.D. Tex., November 4, 2010)**
- J. **SEC v. Pride International, Inc. (S.D. Tex., November 4, 2010)**
- K. **SEC v. Tidewater Inc. (E.D. La., November 4, 2010)**
- L. **SEC v. Transocean Inc. (D.D.C., November 4, 2010)**
- M. **SEC v. GlobalSantaFe Corp. (D.D.C., November 4, 2010)**
- N. **SEC v. Noble Corporation (S.D. Tex., November 4, 2010)**
- O. **In the Matter of Royal Dutch Shell plc (November 4, 2010)**

Entities and Individuals:

- Panalpina, Inc., guilty plea and settled civil complaint entered November 4, 2010.
- Panalpina World Transport (Holding) Ltd., deferred prosecution agreement and settled civil complaint entered November 4, 2010.
- Tidewater Inc., settled civil complaint entered November 4, 2010.
- Tidewater Marine International Inc., deferred prosecution agreement entered November 4, 2010.
- Royal Dutch Shell plc, cease-and-desist-order filed November 4, 2010.
- Shell Nigeria Exploration and Production Company Ltd., cease-and-desist order and deferred prosecution agreement entered November 4, 2010.
- Pride International, Inc., deferred prosecution agreement and settled civil complaint entered November 4, 2010.
- Pride Forasol S.A.S., guilty plea entered November 4, 2010.
- Transocean Inc., deferred prosecution agreement and settled civil complaint entered November 4, 2010.
- GlobalSantaFe Corp., settled civil complaint filed November 4, 2010.
- Noble Corporation, non-prosecution agreement settled civil complaint and entered November 4, 2010.

*Criminal Charges:*

- Conspiracy:
  - To bribe foreign officials (Tidewater Inc., SNEPC, Pride Forasol, Pride International Inc., Panalpina World Transport)
  - to falsify of books and records (Transocean, Inc., Tidewater Inc., SNEPC, Pride International Inc., Panalpina Inc.,)
- Aiding and Abetting:
  - Falsification of books and records (Panalpina Inc., SNEPC, Transocean, Inc., Pride Forasol S.A.S.)
- Bribery of foreign officials (Transocean, Inc., Pride Forasol S.A.S.)
- Falsification of books and records (Tidewater Inc.)

*Civil Charges:*

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)
- Aiding and Abetting:
  - the bribery of foreign officials (Panalpina Inc.)
  - the falsification of books and records (Panalpina Inc.)

*Location and Time Period of Misconduct:* Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, Turkmenistan, 2002-2007.

*Summary:*

*Panalpina World Transport (Holding) Ltd. And Panalpina Inc.*

Both Panalpina World Transport Ltd., a global freight forwarding and logistics services firm based in Switzerland, and its U.S. subsidiary Panalpina Inc. (collectively Panalpina), were criminally charged with conspiracy to violate the books and records provisions of the FCPA and with aiding and abetting certain customers in violating the books and records provisions of the FCPA. On November 4, 2010, Panalpina World Transport entered into a deferred prosecution agreement with the Department of Justice regarding the alleged violations of the FCPA.

On the same date, Panalpina, Inc. pled guilty to the criminal charges and settled with the SEC regarding the civil complaint filed in the U.S. District Court for the Southern District of Texas Houston Division, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and with aiding and abetting certain customers in violating the books and records and internal control provisions of the FCPA.

According to court documents, Panalpina admitted that the companies, through subsidiaries and affiliates engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry. They did so in order to circumvent local rules and regulations relating to the importation of goods and materials into numerous foreign jurisdictions. Panalpina admitted that between 2002 and 2007, it paid thousands of bribes totaling at least \$27 million to foreign officials in at least seven countries, including Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan.

In addition, according to court documents, Panalpina employees, including managers, knew and understood as part of these in-country services, local affiliates would often need to bribe government officials in order to secure the importation or preferential customs treatment requested by its customers, and they knowingly and substantially assisted the its customers' violations of the FCP A's books and records and internal controls provisions.

*Tidewater, Inc. and Tidewater Marine International Inc.:*

On November 4, 2010, Tidewater Marine International Inc., a global operator of offshore service and supply vessels for energy exploration headquartered in New Orleans, a subsidiary of Tidewater Inc. and a customer of Panalpina, entered into a deferred prosecution agreement with the Department of Justice regarding alleged charges of conspiracy to violate the anti-bribery and books and records provisions of the FCPA, and with violating the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Tidewater Inc., in the U.S. District Court for the Eastern District of Louisiana, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

According to court documents, the charges relate to approximately \$160,000 in bribes paid through Tidewater's employees and agents to tax inspectors in Azerbaijan to improperly secure favorable tax assessments and approximately \$1.6 million in bribes paid through Panalpina to Nigerian customs officials to induce the officials to disregard Nigerian customs regulations relating to the importation of vessels into Nigerian waters.

According to the complaint filed, these improper payments were authorized by senior employees at Tidewater and its subsidiaries while knowing, or ignoring red flags which indicated a high probability that such payments would be passed to government officials. Additionally, that Tidewater failed to maintain sufficient internal controls to prevent such payments and that the company inaccurately recorded the payments in its books and records.

*Shell Nigeria Exploration and Production Company Ltd.:*

On November 4, 2010, Shell Nigeria Exploration and Production Company, Ltd. (SNEPC), a Nigerian subsidiary of Royal Dutch Shell plc and customer of Panalpina, Inc., entered into a deferred prosecution agreement with the Department of Justice regarding alleged charges of conspiracy to violate the anti-bribery and books and records provisions of the FCPA, and with aiding and abetting a violation of the books and records provisions. On the same date, the SEC filed a cease-and-desist order against SNEPC in an administrative hearing for alleged violations of anti-bribery and books and records and internal controls provisions of the FCPA.

According to court documents, SNEPC paid approximately \$2 million to its subcontractors with the knowledge that some or all of the money would be paid as bribes to Nigerian customs officials by Panalpina, in order to import materials and equipment into Nigeria. Additionally, SNEPC admitted that the company falsely recorded the bribes made on their behalf as legitimate business expenses in their corporate books, records and accounts.

*Royal Dutch Shell plc:*

On November 4, 2010, the SEC filed a cease-and-desist order against Royal Dutch Shell plc (Shell), and oil company headquartered in the Netherlands, for violations of the anti-bribery, books and records, and internal control provisions of the FCPA.

According to court documents, between 2002 and 2005, Shell and its subsidiary SNEPC, violated the FCPA by funneling illegal payments of approximately \$ 3.5 million through their customs brokers to Nigerian officials in order to obtain preferential treatment during the customs process for the purpose of assisting Shell obtain or retain business in Nigeria. Shell profited approximately \$14 million from the illegal payments. Court documents also allege that none of the improper payments were accurately reflected in Shell's books and records and that Shell's system of internal controls was not adequate at the time to detect and prevent the suspicious payments.

*Pride International Inc. and Pride Forasol S.A.S:*

On November 4, 2010, Pride International Inc. (Pride) entered into a deferred prosecution agreement with the Department of Justice regarding charges of conspiring to violate the anti-bribery and books and records provisions of the FCPA; violating the anti-bribery provisions of the FCPA; and violating



the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Pride in the U.S. District Court for the Southern District of Texas Houston Division, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Pride Forasol S.A.S, a wholly owned French subsidiary of Pride, pled guilty on November 4, 2010 to criminal charges of conspiracy to violate the anti-bribery provisions of the FCPA; violating the anti-bribery provisions of the FCPA; and aiding and abetting the violation of the books and records provisions of the FCPA.

According to court documents, in or about early 2006, Pride, a Houston-based corporation and one of the world's largest offshore drilling companies, discovered evidence of improper payments made to foreign officials in Venezuela, India and Mexico, between 2003 and 2005. Additionally, that employees of Pride were aware of the illegal payments totaling approximately \$800,000.

According to court documents, the bribes were paid to extend drilling contracts for three rigs operating offshore in Venezuela; to secure a favorable administrative judicial decision relating to a customs dispute for a rig imported into India; and to avoid the payment of customs duties and penalties relating to a rig and equipment operating in Mexico.

Pride made a voluntary disclosure to the SEC promptly after the discovery of the improper. During the course of the investigation, Pride provided information and substantially assisted in the investigation of Panalpina Inc.

#### *Transocean Inc.:*

On November 4, 2010, Transocean, Inc., a global provider of offshore oil drilling services and equipment based in Vernier, Switzerland, entered into a deferred prosecution agreement with the Department of Justice regarding alleged charges of conspiracy to violate the anti-bribery and books and records provisions of the FCPA; violating the anti-bribery provision of the FCPA; and aiding and abetting the violation of the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Transocean Inc. in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and with aiding and abetting certain customers in violating the books and records and internal control provisions of the FCPA.

According to court documents, Transocean made approximately \$90,000 in illicit payments between at 2002 to 2007 through its customs agents to Nigerian government officials in order to extend the company's temporary importation status of its drilling rigs.

It is further alleged that Transocean failed to maintain internal controls to detect and prevent unlawful payments to customs officials in Nigeria and improperly recorded the illicit payments to Nigerian customs officials in its accounting books and records.

#### *GlobalSantaFe Corp.:*

On November 4, 2010, the SEC filed a settled civil complaint against GlobalSantaFe Corp. (GSF), in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and with aiding and abetting certain customers in violating the books and records and internal control provisions of the FCPA.

According to court documents, GSF, which was incorporated in the Cayman Islands and headquartered in Texas and provided offshore oil and gas drilling services for oil and gas exploration companies, made illegal payments to officials of the Nigerian Customs Service through its customs brokers between 2002 and 2007. It is alleged these payments were made to secure documentation showing that its rigs had left Nigerian waters when the rigs had in fact never moved.

The SEC's complaint alleges that the bribes allowed GSF to avoid approximately \$1.5 million in cost from not physically moving the rigs and gain a profit of approximately \$619,000 from not interrupting operations to move the rigs. These payments were not properly recorded within GSF's books and records.



*Noble Corporation:*

On November 4, 2010, Noble Corporation (Noble), a Swiss corporation and offshore drilling services provider, entered into a non-prosecution agreement with the Department of Justice. On the same day the SEC filed a settled civil complaint against Noble, in the U.S. District Court for the Southern District of Texas Houston Division, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

In 2007, after discovering possible violations through its own internal processes, Noble voluntarily disclosed its findings to the department and SEC. Noble admitted to the department that it had paid approximately \$74,000 to a Nigerian freight forwarding agent, acknowledged that certain employees knew that some of the payments would be passed on as bribes to Nigerian customs officials, and admitted that the company falsely recorded the bribe payments as legitimate business expenses in its corporate books, records and accounts. According to court documents, Noble authorized illicit payments to Nigerian officials in order to obtain permits based on false documents. The illegally obtained permits allowed Noble to remain operating rigs in Nigeria and avoid cost of approximately, \$4,294,933.

*Criminal Disposition:*

On November 4, 2010, Panalpina Inc., pled guilty and was ordered to pay a criminal penalty in the amount of \$70.56 million. On the same date, Pride Forasol pleaded guilty and Noble Corporation entered into a non-prosecution agreement with the Department of Justice and agreed to pay a \$2.59 million criminal penalty.

Additionally, on November 4, 2010, Panalpina World Transport, SNEPC, Pride International, Tidewater Marina International., and Transocean, Inc entered into deferred prosecution agreements with the Department of Justice and agreed to pay criminal penalties as follows: SNEPC paid \$30 million; Pride International paid \$32.625 million; Tidewater Marina International paid \$7.35 million; and Transocean, Inc. paid \$13.44 million.

*Civil Disposition:*

On November 4, 2010, without admitting or denying the SEC's allegations, all defendants consented to the entry of a judgment permanently enjoining them from future FCPA violations. All defendants were ordered to pay monetary penalties as follows: Panalpina paid disgorgement of \$11,329,369; Pride International paid disgorgement and prejudgment interest of \$23,529,718; Tidewater paid \$8,104,362 in disgorgement and a \$217,000 civil penalty; Transocean, Inc. paid disgorgement and prejudgment interest of \$7,265,080; GlobalSantaFe, Corp. paid disgorgement of \$3,758,165 and a penalty of \$2.1 million; and Noble Corporation paid disgorgement and prejudgment interest of \$5,576,998. SNEPC and Royal Dutch Shell plc paid disgorgement of \$14,153,536 and prejudgment interest of \$3,995,923.

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**31. ABB Ltd<sup>18</sup>**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. ABB Inc. (S.D. Tex., September 29, 2010)**
- B. United States v. ABB Ltd – Jordan (S.D. Tex., September 29, 2010)**
- C. United States v. Enrique Aguilar, et al. (C.D. Cal., September 15, 2010)**
- D. United States v. John Joseph O'Shea (S.D. Tex., November 16, 2009)**

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<sup>18</sup> Also see Cases 87 and 91.

- E. United States v. Fernando Maya Basurto (S.D. Tex., June 10, 2009)**
- F. United States v. Ali Hozhabri (S.D. Tex., November 1, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

- G. SEC v. ABB Ltd (D.D.C., September 29, 2010)**
- H. SEC v. Ali Hozhabri (D.D.C., August 6, 2008)**

Entities and Individuals:

- ABB Ltd, deferred prosecution agreement and civil complaint filed September 29, 2010.
- ABB Inc., charged September 29, 2010.
- ABB Ltd – Jordan, charged September 29, 2010.
- John Joseph O’Shea, General Manager of ABB Inc., indicted November 16, 2009.
- Fernando Maya Basurto, Agent/Intermediary, indicted June 10, 2009.
- Ali Hozhabri, Project Manager for ABB Inc., indicted November 1, 2007; civil complaint filed August 6, 2008.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (ABB Inc., O’Shea, Basurto)
  - to falsify books and records (ABB Ltd – Jordan)
  - to commit currency transfer structuring (Basurto)
  - to commit international money laundering (O’Shea, Basurto)
  - to falsify records in a federal investigation (Basurto, O’Shea)
  - to commit wire fraud (ABB Ltd – Jordan and Hozhabri)
- Bribery of foreign officials (ABB Inc., O’Shea)
- Money laundering (all defendants except Basurto)
- Falsification of records in a federal investigation (O’Shea)
- Currency transaction structuring (Basurto)
- Bulk Cash Smuggling (Hozhabri)
- Failure to File Report Regarding Monetary Instrument (Hozhabri)

Civil Charges:

- Bribery of foreign officials (ABB Ltd)
- Books and records violations (all defendants)
- Internal controls violations (all defendants)
- Aiding and abetting ABB’s falsification of books and records (Hozhabri)

Location and Time Period of Misconduct: Mexico, 1997-2008; Iraq, 2000-2004.

Summary:

*Bribery of CFE Officials by Employees of ABB Inc.:*

On April 18, 2005, ABB Ltd., an energy equipment and services company based in Switzerland and listed on the New York Stock Exchange, self-reported to the SEC and the DOJ that its Sugar Land, Texas subsidiary, ABB Inc., may have made corrupt payments to public officials in Mexico to obtain contracts with the Comisión Federal de Electricidad (CFE), a Mexican state-owned utility company. ABB Inc., which does business as ABB Network Management (“ABB NM”), provided products and services to electrical utilities, many of them foreign state-owned utilities, for network management in power generation, transmission, and distribution.

According to court documents, while acting as the general manager of ABB NM, John Joseph O'Shea arranged and authorized payments to multiple officials at CFE in exchange for lucrative contracts. In order to conceal these bribes, ABB NM hired a Mexican company, of which Fernando Basurto was a principal, to serve as its sales representative in Mexico. In exchange for channeling the bribes, the Mexican company received a percentage of the revenue generated from business with Mexican governmental utilities, including CFE. ABB NM also allegedly paid bribes through Sorvill International, S.A., a company controlled by Enrique and Angela Aguilar.

In December 1997, CFE awarded ABB NM the SITRACEN contract, which called for significant upgrades to Mexico's electrical network system. This contract generated more than \$44 million in revenue for the company. In October 2003, CFE awarded ABB NM the Evergreen contract, a multi-year contract for the maintenance and upgrading of the SITRACEN contract.

In exchange for the Evergreen contract, O'Shea, Basurto, and officials at CFE allegedly agreed that approximately 10 percent of the revenue that ABB NM received from CFE would be returned to CFE officials as corrupt payments and that one percent of the contract revenue would be received by O'Shea as kickback payments. The Evergreen contract ultimately generated more than \$37 million in revenue for the ABB NM. O'Shea, Basurto, and others also allegedly used false invoices from Mexican companies as a basis to make international wire transfers that purported to be legitimate payments for "technical services" and "maintenance support services," but which were actually corrupt payments. Additional "commission payments" made to Basurto and his family were later transferred to CFE officials. All together, O'Shea allegedly authorized more than \$900,000 in corrupt payments to CFE officials before an internal investigation by ABB Ltd stopped the transfers.

After O'Shea was subsequently terminated from ABB NM, O'Shea, Basurto, and others allegedly engaged in a cover up. As part of this conspiracy, O'Shea and Basurto fabricated documents that purported to be evidence of a legitimate business relationship between ABB NM and the Mexican companies that provided the false invoices.

For his role in the scheme to bribe CFE officials and his attempts to cover-up the bribery, O'Shea was charged in November 2009 in an 18-count indictment with conspiracy, bribery of foreign officials in violation of the FCPA, international money laundering, and falsifying records in a federal investigation. On June 10, 2009, Basurto was charged in a four count indictment with conspiracy and structuring transactions to avoid reporting requirements. Subsequently, on November 23, 2009, Basurto was charged in a superseding information with conspiracy to bribe foreign officials in violation of the FCPA, to commit international money laundering, and to falsify records in a federal investigation.

On September 29, 2010, the Department charged ABB NM with one count of violating the anti-bribery provisions of the FCPA and one count of conspiracy to violate the anti-bribery provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against ABB Ltd, charging the company with violating the anti-bribery, books and records, and internal controls provisions of the FCPA in connection with the CFE bribery scheme. According to court documents, ABB NM paid \$1.9 million in bribes to CFE officials for in order to win the SITRACEN and Evergreen contracts.

#### *Other Misconduct by Employees of ABB Inc.:*

On November 1, 2007, Ali Hozhabri, a former ABB NM project manager, was indicted in the Southern District of Texas on three counts of bulk cash smuggling and three counts of failure to file reports regarding the foreign transportation of monetary instruments of more than \$10,000. Subsequently, in August 2008, the SEC charged Hozhabri in a civil complaint with books and records and internal controls violations. According to the SEC's complaint, between 2002 and 2004, Hozhabri fraudulently submitted approximately \$468,714 in cash and check disbursement requests to ABB NM for purported business expenses associated with projects in Brazil, Paraguay, and the United Arab Emirates. These purported expenses were phony and were inaccurately recorded as legitimate business expenses in ABB's books and records.

#### *Kickbacks to the former Iraqi Government by Employees of ABB Ltd - Jordan:*

On September 29, 2010, the Department also charged ABB Ltd's Jordanian subsidiary, ABB Ltd – Jordan, with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. According to court documents, from 2000 to 2004, ABB Ltd – Jordan and other ABB subsidiaries paid, or caused to be paid, more than \$800,000 in kickbacks to the former Iraqi government to secure 27 contracts under the U.N. Oil-for-Food Program (OFFP). For example, from 2001 to 2002, ABB Ltd – Jordan paid more than \$300,000 in kickbacks to three regional companies of the Iraqi Electricity Commission, an Iraqi government agency, in order to secure 11 purchase orders worth more than \$5.9 million. All together, ABB subsidiaries allegedly earned more than \$13,500,000 in revenue and \$3,800,000 in profits from contracts obtained through illegal kickbacks under the OFFP.

**Criminal Disposition:**

ABB Inc. (ABB NM) pleaded guilty on September 29, 2010, and was fined \$17.1 million. In order to resolve the pending criminal charges against its Jordanian subsidiary, ABB Ltd entered into a three-year deferred prosecution agreement on the same date. As part of the agreement, ABB Ltd agreed to pay \$1.92 million and to adhere to a set of enhanced corporate compliance and reporting obligations, which include the recommendations of an independent compliance consultant.

On January 17, 2012, O'Shea was acquitted of charges two through thirteen of the indictment. Upon motion of the Government, the remaining counts were dismissed with prejudice on February 9, 2012.

Basurto pleaded guilty on November 16, 2009. On April 5, 2012, he was sentenced to time served.

Ali Hozhabri pleaded guilty on June 23, 2008, to a one-count superseding information charging him with conspiracy to commit wire fraud. Hozhabri is currently awaiting sentencing.

**Civil Disposition:**

Without admitting or denying the SEC's allegations, ABB Ltd and Hozhabri each consented to the entry of a judgment permanently enjoining them from future FCPA violations. ABB Ltd also agreed to pay \$17,141,474 in disgorgement, \$5,662,788 in prejudgment interest, and a \$16,510,000 penalty.

Hozhabri was also ordered to pay \$234,357 in disgorgement. The disgorgement amount will be deemed satisfied by his payment of that amount in the form of a criminal fine.

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**32. Lindsey Manufacturing Company**

**Resulting Criminal Enforcement Action(s):**

**A. United States v. Enrique Aguilar, et al. (C.D. Cal., September 15, 2010)**

**Entities and Individuals:**

- Enrique Faustino Aguilar Noriega, Agent/Intermediary, indicted September 15, 2010.
- Angela Maria Gomez Aguilar, Agent/Intermediary, indicted September 15, 2010.
- Lindsey Manufacturing Company, indicted October 21, 2010.
- Keith E. Lindsey, President, indicted October 21, 2010.
- Steve K. Lee, Vice President and CFO, indicted October 21, 2010.

**Criminal Charges:**

- Conspiracy:
  - to bribe foreign officials (all defendants except Angela Aguilar)
  - to commit international money laundering (Enrique Aguilar and Angela Aguilar)
- Bribery of foreign officials (all defendants except Angela Aguilar)
- Money laundering (Enrique Aguilar and Angela Aguilar)

**Location and Time Period of Misconduct:** Mexico, 2002-2009.



Summary:

On August 10, 2010, Angela Aguilar, of Cuernavaca, Mexico, was arrested on a criminal complaint charging her with violating the anti-bribery provisions of the FCPA when she traveled to Houston from Mexico. Aguilar and her husband, Enrique Aguilar, were subsequently indicted on September 15, 2010. The seven-count indictment charged Enrique Aguilar with conspiracy to violate the FCPA, FCPA violations, money laundering conspiracy, and money laundering, while Angela Aguilar was charged with money laundering conspiracy and money laundering.

On October 21, 2010, a Grand Jury in the Central District of California returned a superseding indictment against Enrique Aguilar, Angela Aguilar, Lindsey Manufacturing Company (Lindsey Manufacturing), Keith E. Lindsey, and Steve K. Lee. While Enrique and Angela Aguilar were charged the same violations as in the original indictment, the superseding indictment added conspiracy and FCPA charges against the Azusa, California-based company, its President (Lindsey), and its Vice President (Lee).

According to the superseding indictment, Lindsey Manufacturing, which makes emergency restoration systems and other equipment used by electrical utility companies, engaged in a scheme from 2002 until 2009 to pay bribes to officials of the Comisión Federal de Electricidad (CFE), a Mexican state-owned electrical utility company. From approximately February 2002 until March 2009, Lindsey Manufacturing, Lindsey, and Lee conspired to pay bribes to CFE officials using a Mexican intermediary company named Grupo Internacional de Asesores S.A. (Grupo), a company directed by Enrique and Angela Aguilar, which purported to provide sales representation services for companies doing business with CFE. According to court records, Grupo received 30 percent commission on all the goods and services Lindsey Manufacturing sold to CFE, even though this was a significantly higher commission than previous sales representatives for the company had received. Lindsey and Lee were alleged to have understood that all or part of the 30 percent commission would be used to pay bribes to senior officials of CFE in exchange for CFE awarding contracts to the their company. The costs of goods and services sold to CFE were then allegedly increased by 30 percent to ensure that the added cost of paying Enrique Aguilar and Angela Aguilar was absorbed by CFE and not Lindsey Manufacturing.

As part of the scheme, Enrique Aguilar allegedly caused fraudulent invoices to be submitted from Grupo to Lindsey Manufacturing for 30 percent of the contract price. According to the superseding indictment, Lindsey and Lee then caused the money requested in the fraudulent invoices to be wired into Grupo's brokerage account, allegedly knowing that the invoices were fraudulent and the funds were being used as bribes.

Enrique and Angela Aguilar allegedly then laundered the money in the Grupo brokerage account to make concealed payments for the benefit of CFE officials. According to the superseding indictment, Enrique and Angela Aguilar purchased a yacht for approximately \$1.8 million named the *Dream Seeker* and a Ferrari for \$297,500 for a CFE official. According to the indictment, Enrique and Angela Aguilar also paid more than \$170,000 worth of American Express bills for a CFE official and sent approximately \$600,000 to relatives of a CFE official.

According to court documents, CFE Mexico ultimately awarded 19 government contracts to the California-based company worth approximately \$14.9 million.

Criminal Disposition:

On May 10, 2011, a jury in the Central District of California convicted Lindsey Manufacturing, Keith Lindsey, and Steve Lee of one count of conspiracy to violate the FCPA and five counts of FCPA violations. On the same date, Angela Aguilar was found guilty of one count of money laundering conspiracy. The court entered a judgment of acquittal prior to the jury's verdict on one substantive count of money laundering against Angela Aguilar. On June, 3, 2011, she was sentenced to the Bureau of Prisons for time served and supervised release for a term of 3 years. The convictions against Lindsey Manufacturing, Lindsey and Lee were subsequently dismissed on November 29, 2011. Enrique Aguilar remains a fugitive.

**33. Alliance One International, Inc.**

**Resulting Criminal Enforcement Action(s):**

- A. In Re Alliance One International, Inc. (August 6, 2010)**
- B. United States v. Alliance One Tobacco Osh, LLC (W.D. Va., August 6, 2010)**
- C. United States v. Alliance One International AG (W.D. Va., August 6, 2010)**
- D. United States v. Bobby Jay Elkin, Jr. (W.D. Va., August 3, 2010)**

**Resulting Civil/Administrative Enforcement Action(s):**

- E. SEC v. Alliance One International, Inc. (D.D.C., August 6, 2010)**
- F. SEC v. Bobby Jay Elkin, Jr., et al. (D.D.C., April 28, 2010)**

**Entities and Individuals:**

- Alliance One International, Inc. (Alliance One), non-prosecution agreement announced and civil complaint filed August 6, 2010.
- Alliance One Tobacco Osh, LLC (AOI-Kyrgyzstan), charged August 6, 2010.
- Alliance One International AG (AOIAG), charged August 6, 2010.
- Bobby J. Elkin, Jr., Country Manager for Kyrgyzstan, charged August 3, 2010; civil complaint filed April 28, 2010.
- Baxter J. Myers, Regional Financial Director, civil complaint filed April 28, 2010.
- Thomas G. Reynolds, Corporate Controller, civil complaint filed April 28, 2010.
- Tommy L. Williams, Senior Vice President of Sales, civil complaint filed April 28, 2010.

**Criminal Charges:**

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (AOI-Kyrgyzstan, AOIAG)
- Falsification of books and records (AOI-Kyrgyzstan, AOIAG)

**Civil Charges:**

- Bribery of foreign officials (all defendants)
- Falsification of books and records (Alliance One)
- Internal controls violations (Alliance One)
- Aiding and abetting Alliance's books and records violations (Elkin, et al.)
- Aiding and abetting Alliance's internal controls violations (Elkin, et al.)

**Location and Time Period of Misconduct:** Kyrgyzstan, 1996-2004; Thailand, 2000-2004; Malawi, 2002-2003; Greece, 2003; Indonesia, 2003; Mozambique, 2004-2007; China and Thailand, 2005.

**Summary:**

On August 6, 2010, two foreign subsidiaries of Alliance One International, Inc. (Alliance One), a global tobacco leaf merchant headquartered in Morrisville, N.C., were charged in separate three-count criminal informations with conspiring to violate the FCPA, violating the anti-bribery provisions of the FCPA, and violating the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil action against Alliance One in the U.S. District Court for the District of Columbia. Alliance One was formed in 2005 as the result of a merger of Dimon Incorporated and Standard Commercial Corporation, both of which were wholesale tobacco merchants. The charges brought by the Department and the SEC related to conduct that was committed by employees and agents of foreign subsidiaries of both Dimon and Standard prior to the merger.

Previously, on August 3, 2010, Bobby Jay Elkin, Jr., Dimon's former Kyrgyzstan country manager, was charged with one-count of conspiring to violate the FCPA's anti-bribery provisions. Elkin,

along with three other former Alliance One employees, was also charged by the SEC in a settled civil enforcement action filed on April 28, 2010.

The criminal and civil charges filed against Alliance One, its subsidiaries, and former employees stem from bribery schemes in multiple countries, including Kyrgyzstan and Thailand:

- i. Kyrgyzstan: According to court documents, AOI-Kyrgyzstan admitted that employees of Dimon's Kyrgyz subsidiary paid a total of approximately \$3 million in bribes from 1996 to 2004 to various officials in the Republic of Kyrgyzstan, including officials of the Kyrgyz Tamekisi, a government entity that controlled and regulated the tobacco industry in Kyrgyzstan. Employees of Dimon's Kyrgyz subsidiary also paid bribes totaling \$254,262 to five local provincial government officials "known as "Akims," to obtain permission to purchase tobacco from local growers during the same period. In addition, the employees paid approximately \$82,000 in bribes to officers of the Kyrgyz Tax Police in order to avoid penalties and lengthy tax investigations.

As a country manager for Kyrgyzstan, Bobby J. Elkin, Jr. authorized, directed, and made these bribes in Kyrgyzstan through a bank account held under his name called the Special Account. According to the SEC's complaint, Baxter J. Myers, a former Regional Financial Director, authorized all fund transfers from a Dimon subsidiary's bank account to the Special Account and Thomas G. Reynolds, a former Corporate Controller, formalized the accounting methodology used to record the payments made from the Special Account for purposes of Dimon's internal reporting.

- ii. Thailand: From 2000 to 2004, Dimon, Standard, and another competitor, Universal Leaf Tabacos Ltda., sold Brazilian-grown tobacco to the Thailand Tobacco Monopoly (TTM). Each of these three companies retained sales agents in Thailand, and collaborated through those agents to apportion tobacco sales to the TTM among themselves, coordinate their sales prices, and pay kickbacks to officials of the TTM in order to ensure that each company would share in the Thai tobacco market. These companies made annual sales to the TTM, and in order to secure these sales contracts, each company paid kickbacks to certain TTM representatives based on the number of kilograms of tobacco they sold to the TTM. To obtain these contracts, Dimon paid bribes totaling \$542,590 and Standard paid bribes totaling \$696,160, for a total of \$1,238,750 in bribes to TTM officials during this period. In addition, these companies then falsely characterized these corrupt payments on each of the companies' respective books and records as "commissions" paid to their sales agents.

According to the SEC's complaint, Tommy L. Williams, a former Senior Vice President of Sales, directed the sales of tobacco from Brazil and Malawi to the TTM through Dimon's agent in Thailand. In this capacity, Williams authorized the payment of bribes to the TTM officials.

In addition, the SEC's complaint alleged that employees of Standard and Dimon improperly provided things of value to foreign government officials in the following countries:

- iii. China and Thailand: By at least May 2005, Standard provided gifts, travel, and entertainment expenses to government officials in China and Thailand. For example, in 2002 and 2003, contemporaneous documents show that Standard employees provided



watches, cameras, laptop computers, and other gifts to Chinese and Thailand tobacco officials. Standard also paid for dinner and sightseeing expenses during non-business related travel to Alaska, Los Angeles, and Las Vegas for Chinese and Thailand government delegations.

- iv. Greece: A 2003 internal audit of two Dimon subsidiaries in Greece revealed a \$96,000 cash payment to a Greek tax official in April 2003 by the country manager of Dimon Greece. The Greek tax official was conducting an audit of Dimon Greece at the time of the payment, and as a result of the payment, Dimon Greece's tax payment was reduced from €2.5 million to approximately €600,000.
- v. Indonesia: In August 2004, the controller of Dimon's Indonesian subsidiary made a cash payment of approximately \$44,000 to an Indonesian tax official in exchange for terminating an audit of the Indonesian subsidiary and obtaining a tax refund of \$67,000.

*Criminal Disposition:*

On August 6, 2010, Alliance One entered into a non-prosecution agreement with the Department and agreed to retain an independent compliance monitor for a minimum of three years.

On the same date, AOI-Kyrgyzstan and AOIAG each pleaded guilty to separate three-count criminal informations. As part of their plea agreements, AOIAG agreed to pay a fine of \$5,250,000 and AOI-Kyrgyzstan agreed to pay a fine of \$4,200,000, for a total fine of \$9.45 million. Sentencing of both AOI subsidiaries has been scheduled for October 21, 2010.

Elkin pleaded guilty on August 3, 2010, to a one-count criminal information charging him with conspiracy to violate the FCPA. He was sentenced on October 21, 2010, to three years' probation and a total fine of \$5,000.

*Civil Disposition:*

Without admitting or denying the SEC's allegations, Alliance One consented to the entry of a final judgment permanently enjoining the company from future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Alliance One was also ordered to pay disgorgement of \$10,000,000 and to retain an independent compliance monitor for three years. On April 28, 2010, the SEC filed a settled civil action against Elkin, Myers, Reynolds, and Williams, which permanently enjoined them from future violations of the FCPA. Myers and Reynolds were each required to pay a \$40,000 civil penalty. The settlement against Elkin takes into account his cooperation with the Commission's investigation.

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**34. Universal Corporation**

*Resulting Criminal Enforcement Action(s):*

- A. In Re Universal Corporation (August 6, 2010)**
- B. United States v. Universal Leaf Tabacos Ltda. (E.D. Va., August 6, 2010)**

*Resulting Civil/Administrative Enforcement Action(s):*

- C. SEC v. Universal Corporation (D.D.C., August 6, 2010)**



Entities and Individuals:

- Universal Corporation, non-prosecution agreement announced August 6, 2010; civil complaint filed August 6, 2010.
- Universal Leaf Tabacos Ltda., charged August 6, 2010.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Thailand, 2000-2004; Malawi, 2002-2003; Mozambique, 2004-2007.

Summary:

On August 6, 2010, Universal Leaf Tabacos Ltda. (Universal Brazil), the Brazilian subsidiary of Universal Corporation (Universal), was charged in the Eastern District of Virginia with conspiring to violate the anti-bribery and books and records provisions of the FCPA, and with violating the anti-bribery provisions of the FCPA. On the same date, the SEC filed a settled civil action against Universal in the District of Columbia, charging the parent company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Universal and its subsidiary stem from schemes to bribe foreign officials in Thailand, Mozambique, and Malawi.

From 2000 to 2004, Universal Brazil and two of its competitors, Dimon Incorporated and Standard Commercial Corporation, sold Brazilian-grown tobacco to the Thailand Tobacco Monopoly (TTM). Each of these three companies retained sales agents in Thailand, and collaborated through those agents to apportion tobacco sales to the TTM among themselves, coordinate their sales prices, and pay kickbacks to officials of the Thailand Tobacco Monopoly in order to ensure that each company would share in the Thai tobacco market. These companies made annual sales to the TTM, and in order to secure these sales contracts, each company paid kickbacks to certain TTM representatives based on the number of kilograms of tobacco they sold to the TTM. To obtain these contracts, Universal Brazil paid approximately \$697,000 in bribes to TTM officials during this period. In addition, Universal Brazil employees then falsely characterized the corrupt payments on the company's books and records as "commissions" paid to the company's sales agents.

According to the SEC's complaint, between October 2002 and November 2003, Universal's African subsidiary also paid \$750,000 in bribes to two high ranking Malawian government officials and \$100,000 to a political opposition leader. Those payments were authorized by, among others, two successive regional heads for Universal's African operations. Universal also failed to accurately record these payments in its books and records.

In addition, the SEC's complaint alleged that from March 2004 through September 2007, Universal subsidiaries made a series of payments in excess of \$165,000 to government officials in Mozambique, through corporate subsidiaries in Belgium and Africa. Among other things, the payments were made to secure an exclusive right to purchase tobacco from regional growers and to procure legislation beneficial to the Company's business.

*Criminal Disposition:*

On August 6, 2010, Universal entered into a non-prosecution agreement with the Department and Universal Brazil pleaded guilty to a two-count information. As part of the non-prosecution and plea agreements, Universal and Universal Brazil agreed to retain an independent compliance monitor for a minimum of three years. Universal Brazil was sentenced on September 1, 2010, to 3 years' organizational probation and a fine of \$4,400,000.

*Civil Disposition:*

Without admitting or denying the SEC's allegations, Universal consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Universal was ordered to disgorge \$4,581,276.51 and to retain an independent compliance monitor for three years.

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**35. Pride International, Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. Joe Summers (S.D. Tex., August 5, 2010)**
- B. SEC v. Bobby Benton (S.D. Tex., December 11, 2009)**

*Entities and Individuals:*

- Bobby Benton, Pride International, Inc.'s Vice President of Western Hemisphere Operations, civil complaint filed December 11, 2009.
- Joe Summers, Pride International, Inc.'s Venezuela Country Manager, civil complaint filed August 5, 2010.

*Civil Charges:*

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- False statements to accountants (all defendants)
- Aiding and abetting Pride International's bribery of foreign officials (all defendants)
- Aiding and abetting Pride International's falsification of books and records (all defendants)
- Aiding and abetting Pride International's internal controls violations (all defendants)

*Location and Time Period of Misconduct:* Venezuela, 2003-2005; Mexico, 2004.

*Summary:*

On December 11, 2009, the SEC charged Bobby Benton, the former Vice President of Western Hemisphere Operations for Pride International, Inc. (Pride), in a civil complaint that alleged violations of the anti-bribery, internal controls, and accounting provisions of the FCPA. As Vice President of Western Hemisphere Operations, Benton was responsible for, among other things, ensuring that Pride conducted its Western Hemisphere operations in compliance with the FCPA, that adequate controls were in place to prevent illegal payments, and that the company's books and records were accurate.

Subsequently, on August 5, 2010, the SEC filed a civil complaint against Joe Summers, Pride's former Venezuela Country Manager. The SEC alleged that Summers had violated the anti-bribery, books and records, and internal controls provisions of the FCPA and had aided and abetting Pride's violations of the same provisions in connection with a scheme to bribe Venezuelan government officials.

According to the complaints filed against Benton and Summers, from 2003 to 2005, Summers authorized or allowed payments totaling \$384,000 to third-party companies believing that all or a portion of the funds would be given to an official of Venezuela's state-owned oil company in order to secure extensions of three drilling contracts. Summers also authorized the payment of approximately \$30,000 to a

third party believing that all or a portion of the funds would be given to an employee of Venezuela's state-owned oil company in order to obtain the payment of receivables.

In addition to the illicit payments to Venezuelan officials, in December 2004, Benton allegedly authorized the bribery of a Mexican customs official in return for favorable treatment regarding customs deficiencies identified during an inspection of a supply boat. The complaint further alleges that Benton had knowledge of a second bribe paid to a different Mexican customs official that same month.

In an effort to conceal these payments, Benton also redacted references to bribery in an action plan responding to an internal audit report and signed two false certifications in connection with audits and reviews of Pride's financial statements, denying any knowledge of bribery.

Civil Disposition:

Without admitting or denying the SEC's allegations, Benton consented to the entry of a final judgment on August 9, 2010, which permanently enjoined him from any future violations of the anti-bribery, books and records, or internal controls provisions of the FCPA, as well as SEC Rule 13b2-2, which regulates representations and conduct in connection with the preparation of required reports and documents. In addition, Benton was ordered to pay a civil penalty in the amount of \$40,000.

Summers, without admitting or denying the SEC's allegations, consented to the entry of an order permanently enjoining him from knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying books and records of an issuer. The order also enjoined Summers from violating the anti-bribery provisions of the FCPA and from aiding and abetting violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition to the permanent injunction, Summers was ordered to pay a civil penalty of \$25,000.

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**36. General Electric Company**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. General Electric Company, et al. (D.D.C., July 27, 2010)**

Entities and Individuals:

- General Electric Company, civil complaint filed July 27, 2010.
- Ionics, Inc., civil complaint filed July 27, 2010.
- Amersham plc, civil complaint filed July 27, 2010.

Civil Charges:

- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

On July 27, 2010, the SEC filed a settled civil action against General Electric Company ("GE") and two GE subsidiaries – Ionics, Inc. (currently known as GE Ionics, Inc.) and Amersham plc (currently known as GE Healthcare Ltd.) – in the U.S. District Court for the District of Columbia. The SEC's complaint charged the companies with books and records and internal controls violations in connection with bribes paid to former Iraqi government officials under the United Nations Oil for Food Program (OFFP) by two GE subsidiaries and two other subsidiaries of public companies that have since been acquired by GE.

*Payments by GE subsidiaries:* According to the SEC's Complaint, from approximately 2000 to 2003, two GE subsidiaries, Marquette-Hellige ("Marquette") and OEC-Medical Systems (Europa) AG

(“OEC-Medical”), made approximately \$2.04 million in kickback payments in the form of computer equipment, medical supplies, and services to the Iraqi Ministry of Health.

- i. Marquette: Marquette, based in Germany, manufactures and sells cardiology monitoring equipment and has been a GE subsidiary since 1998. Marquette entered into three OFFP contracts in which it either paid or agreed to pay illegal kickbacks in the form of computer equipment, medical supplies, and services after declining to make the payments in cash. The contracts were for the supply of disposable electrodes, transducers, and fetal monitors to the Iraqi Health Ministry, and they generated a combined gross profit to Marquette of \$8.8 million. In order to obtain two of the contracts, Marquette's Iraqi agent made in-kind kickback payments of goods and services worth approximately \$1.2 million to the Iraqi Health Ministry in violation of UN regulations. In order to obtain the third contract, the agent offered to make an additional in-kind kickback payment worth approximately \$250,000. The illegal kickbacks were made or offered with the knowledge and approval of Marquette officials.
- ii. OEC-Medical: OEC-Medical, based in Switzerland, manufactures and sells medical equipment. In 2000, OEC-Medical entered into an OFFP contract to provide C-Arms (C-shaped armatures used to support X ray equipment) to the Iraqi Ministry of Health. OEC made an in-kind kickback payment worth approximately \$870,000 on the contract and earned a wrongful profit of \$2.1 million. The OEC-Medical contract was negotiated by the same third party agent that handled the Marquette contracts. As was done with the Marquette contracts, the Iraqi agent agreed to make the payment on behalf of OEC-Medical in the form of computer equipment, medical supplies, and services, rather than cash. In order to conceal from UN inspectors the fact that the agent's commission had been increased to cover an illegal kickback, OEC-Medical and the agent entered into a fictitious "services provider agreement," purporting to identify services the agent would perform to justify his increased commission.

*Payments by subsidiaries of other public companies that have since been acquired by GE:* Two other current GE subsidiaries, Ionics Italba S.r.L. (“Ionics Italba”), and Nycomed Imaging AS (“Nycomed”), made approximately \$1.55 million in cash kickback payments under the OFFP prior to GE’s acquisition of their parent companies.

- a) Nycomed: During the OFFP, Nycomed was a Norway-based subsidiary of publicly-registered Amersham plc, which was acquired by GE in 2004. Between 2000 and 2002, Nycomed entered into nine contracts involving the payment of cash “after-sale-service-fee” kickbacks. The contracts were all direct agreements between Nycomed and the Iraqi Ministry of Health for the provision of Omnipaque and Omniscan. Omnipaque is an injectible contrast agent used in conjunction with X-rays; and Omniscan is a contrast agent used in conjunction with magnetic resonance imaging (MRI). Nycomed paid approximately \$750,000 in kickbacks on the nine contracts and earned approximately \$5 million in wrongful profits. The contracts were negotiated by Nycomed's Jordanian agent, and the kickback payments were explicitly authorized by Nycomed's salesman in Cyprus<sup>19</sup>.

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<sup>19</sup> The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.

The Nycomed salesman increased the agent's commission from 17.5% to 27.5% of the contract price, and artificially increased the U.N. contract prices by 10%, all to cover the cost of the kickbacks.

- b) **Ionics Italba:** During the OFFP, Ionics Italba was an Italy-based subsidiary of publicly-listed Ionics, Inc., which GE acquired in 2005. Ionics Italba manufactures and sells water purification equipment. Between 2000 and 2002, Ionics Italba paid \$795,000 in kickbacks and earned \$2.3 million in wrongful profits on five OFFP contracts to sell water treatment equipment to the Iraqi Oil Ministry. Four of the five contracts were negotiated with side letters documenting the commitment of Ionics Italba to make cash kickback payments. The side letters were concealed from UN inspectors in violation of an OFFP requirement to provide all contract documentation for inspection and UN approval. On the majority of the Ionics Italba contracts, invoices provided by the sales agent included fictitious activities to justify the agent's inflated commission.

**Civil Disposition:**

In order to settle the SEC's charges against GE and the two subsidiaries for which GE assumed liability upon their acquisition, GE agreed to pay disgorgement of \$18,397,949, prejudgment interest in the amount of \$4,080,665, and a civil penalty in the amount of \$1,000,000, for a total monetary penalty of \$23,478,614. In addition, without admitting or denying the SEC's allegations, GE, Ionics, and Amersham consented to the entry of a final judgment permanently enjoining the companies from future violations of the books and records and internal controls provisions of the FCPA.

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**37. Veraz Networks, Inc.**

**Resulting Civil/Administrative Enforcement Action(s):**

**A. SEC v. Veraz Networks, Inc. (N.D. Cal., June 29, 2010)**

**Entities and Individuals:**

- Veraz Networks, Inc., civil complaint filed June 29, 2010.

**Civil Charges:**

- Falsification of books and records
- Internal controls violations

**Location and Time Period of Misconduct:** China and Vietnam, 2007-2008.

**Summary:**

On June 29, 2010, the SEC filed a settled civil complaint against Veraz Networks, Inc. ("Veraz"), a San Jose, California-based telecommunications company. The SEC alleged that Veraz violated the books and records and internal controls provisions of the FCPA in connection with improper payments to foreign officials in China and Vietnam. These payments took place after the company went public in 2007. Specifically, the SEC alleged that Veraz engaged a consultant in China who in 2007 and 2008 gave gifts and offered improper payments together valued at approximately \$40,000 to officials at a government controlled telecommunications company in China in an attempt to win business for Veraz. A Veraz supervisor who approved the gifts described them in an internal Veraz email as the "gift scheme." Similarly, the SEC alleged that in 2007 and 2008, a Veraz employee made improper payments to the CEO of a government controlled telecommunications company in Vietnam in order to win business for Veraz.

Civil Disposition:

Without admitting or denying the SEC's allegations, Veraz consented to the entry of a final judgment permanently enjoining the company from future violations of the books and records and internal controls provisions of the FCPA. In addition, Veraz was ordered to pay a civil penalty of \$300,000.

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**38. Daimler AG**

Resulting Criminal Enforcement Action(s):

- A. United States v. Daimler AG (D.D.C., March 22, 2010)**
- B. United States v. DaimlerChrysler Automotive Russia SAO (D.D.C., March 22, 2010)**
- C. United States v. Daimler Export and Trade Finance GmbH (D.D.C., March 22, 2010)**
- D. United States v. DaimlerChrysler China Ltd. (D.D.C., March 22, 2010)**

Resulting Civil/Administrative Enforcement Action(s):

- E. SEC v. Daimler AG (D.D.C., March 22, 2010)**

Entities and Individuals:

- Daimler AG, charged March 22, 2010; civil complaint filed March 22, 2010.
- DaimlerChrysler Automotive Russia SAO (DCAR), charged March 22, 2010.
- Daimler Export and Trade Finance GmbH (ETF), charged March 22, 2010.
- DaimlerChrysler China Ltd. (DCCL), charged March 22, 2010.

Location and Time Period of Misconduct: At least 22 countries, 1998-2008.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (DCAR, ETF, DCCL)
  - to falsify books and records (Daimler AG)
- Bribery of foreign officials (DCAR, ETF, DCCL)
- Falsification of books and records (Daimler AG)

Civil Charges:

- Bribery of foreign officials (Daimler AG)
- Falsification of books and records (Daimler AG)
- Internal controls violations (Daimler AG)

Summary:

On March 22, 2010, criminal charges were filed in the District of Columbia against Daimler AG, a German corporation, and three of its subsidiaries. On the same date, the SEC filed a settled civil complaint against Daimler AG charging it in relation to alleged violations of the FCPA. According to court documents, Daimler AG, whose shares trade on multiple exchanges in the United States, engaged in a long-standing practice of paying bribes to foreign government officials through a variety of mechanisms, including the use of corporate ledger accounts known as "third-party accounts" or "TPAs," corporate "cash desks," offshore bank accounts, deceptive pricing arrangements and third-party intermediaries. In some cases, Daimler AG or its subsidiaries wire transferred these improper payments to U.S. bank accounts or to the foreign bank accounts of U.S. shell companies, in order for these entities to pass on the bribes.

The court documents alleged that Daimler and its subsidiaries made hundreds of improper payments worth tens of millions of dollars to foreign officials in at least 22 countries – including China, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Nigeria, Russia, Serbia and



Montenegro, Thailand, Turkey, Turkmenistan, Uzbekistan, Vietnam and others – to assist in securing contracts with government customers for the purchase of Daimler vehicles. In addition, Daimler AG admitted that it agreed to pay kickbacks to the former Iraqi government in connection with contracts to sell vehicles to Iraq under the U.N.'s Oil for Food program. The contracts were valued in the hundreds of millions of dollars. In all cases, Daimler AG improperly recorded these corrupt payments in its corporate books and records.

*Criminal Disposition:*

On April 1, 2010, Daimler AG and DCCL entered into deferred prosecution agreements with the Department of Justice. On the same date, DCAR and ETF pled guilty and agreed to pay criminal fines of \$27.26 million and \$29.12 million, respectively. In total, Daimler AG and its subsidiaries agreed to pay \$93.6 million in criminal fines and penalties.

*Civil Disposition:*

Simultaneous with the criminal settlement, U.S. District Court Judge Richard J. Leon entered a separate judgment against Daimler AG resolving the civil complaint filed by the SEC. This judgment enjoined Daimler from future violations, required Daimler AG to pay \$91,432,867 million in disgorgement of profits relating to those violations, and required Daimler obtain an independent FCPA compliance monitor for a three-year period.

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**39. BAE Systems plc**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. BAE Systems plc (February 4, 2010)**

*Entities and Individuals:*

- BAE Systems plc, charged February 4, 2010.

*Criminal Charges:*

- Conspiracy:
  - to defraud the United States by impairing and impeding its lawful functions;
  - to make false statements; and
  - to violate the Arms Export Control Act and International Traffic in Arms Regulations.

*Location and Time Period of Misconduct:* Czech Republic, Hungary, Saudi Arabia, 2000-2002.

*Summary:*

On February 4, 2010, BAE Systems plc (BAES), a multinational defense contractor with headquarters in the United Kingdom, was charged in a one-count criminal information with conspiracy to defraud the United States by impairing and impeding its lawful functions, to make false statements about its FCPA compliance program, and to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR). These charges alleged that from 2000 to 2002, BAES represented to various U.S. government agencies, including the Departments of Defense and Justice, that it would create and implement policies and procedures to ensure its compliance with the anti-bribery provisions of the FCPA, as well as similar, foreign laws implementing the Organisation for Economic Co-operation and Development (OECD) Anti-bribery Convention.

In pleading guilty, BAES acknowledged that, despite its representations to the U.S. government to the contrary, BAES knowingly and willfully failed to create sufficient compliance mechanisms to ensure compliance with these legal prohibitions on foreign bribery. BAES admitted that it regularly used and

encouraged the establishment of shell companies and third party intermediaries to assist in securing sales of defense articles. From May 2001 onward, BAES made a series of substantial payments to these shell companies and third party intermediaries that were not subjected to the degree of scrutiny and review to which BAES told the U.S. government the payments would be subjected. BAES was aware there was a high probability that part of some of the payments would be used to ensure that BAES was favored in foreign government decisions regarding the purchase of defense articles. BAES knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense articles, in violation of the AECA and ITAR.

*Criminal Disposition:*

On March 1, 2010, BAES pled guilty to the charges filed against it on February 4, 2010. As part of its guilty plea, BAES was sentenced to a criminal fine of \$400,000,000, which was the statutory maximum fine. BAES also agreed to retain an independent compliance monitor for three years and maintain a compliance program that is designed to detect and deter violations of the FCPA, the AECA, ITAR, and similar foreign anti-corruption and export control laws.

**40. Bribery of Officials at Telecommunications D'Haiti (Haiti Teleco)**

*Resulting Criminal Enforcement Action(s):*

- A. **United States v. Jean Fourcand (S.D. Fla., February 1, 2010)**
- B. **United States v. Joel Esquenazi, et al. (S.D. Fla., December 4, 2009)**
- C. **United States v. Juan Diaz (S.D. Fla., April 22, 2009)**
- D. **United States v. Antonio Perez (S.D. Fla., April 22, 2009)**
- E. **United States v. Washington Vasconez Cruz (S.D. Fla., July 13, 2011)**
- F. **United States v. Amadeus Richers (S.D. Fla., July 13, 2011)**
- G. **United States v. Cinergy Telecommunications, Inc. (S.D. Fla., July 13, 2011)**
- H. **United States v. Patrick Joseph (S.D. Fla., July 13, 2011)**
- I. **United States v. Jean Rene Duperval (S.D. Fla., July 13, 2011)**
- J. **United States v. Marguerite Grandison (S.D. Fla., July 13, 2011)**

*Entities and Individuals:*

- Joel Esquenazi, President, indicted December 4, 2009, convicted August 5, 2011.
- Carlos Rodriguez, Executive Vice President, indicted December 4, 2009, convicted August 5, 2011.
- Robert Antoine, Director of International Relations at Haiti Teleco, indicted December 4, 2009.
- Jean Rene Duperval, Director of International Relations at Haiti Teleco, indicted December 4, 2009, subsequently charged July 13, 2011.
- Antonio Perez, Controller, charged April 22, 2009.
- Juan Diaz, President of Intermediary Company, charged April 22, 2009.
- Jean Fourcand, President of Intermediary Company, charged February 1, 2010.
- Marguerite Grandison, President of Telecom Consulting Services Corp., indicted December 4, 2009, subsequently charged July 13, 2011.
- Cinergy Telecommunications, Inc., charged July 13, 2011.
- Washington Vasconez Cruz, President and Chief Operating Officer of Cinergy and President of Uniplex, indicted July 13, 2011.
- Amadeus Richer, former Director of Cinergy and Uniplex, indicted July 13, 2011
- Patrick Joseph, former Director General for Telecommunications at Haiti Teleco, charged July 13, 2011.



*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (Perez, Diaz, Esquenazi, Rodriguez, Grandison, Cinergy, Cruz and Richer)
  - to commit money laundering (all defendants except Fourcand)
  - to commit wire fraud (Esquenazi, Rodriguez, Grandison, Cinergy, Cruz and Richer)
- Bribery of foreign officials (Esquenazi, Rodriguez, Grandison, Cinergy, Cruz and Richer)
- Money laundering (Fourcand, Esquenazi, Rodriguez, Duperval, Grandison, Cinergy, Cruz and Richer)

*Location and Time Period of Misconduct:* Haiti, 1998-2006.

*Summary:*

On December 4, 2009, two former executives of a Florida-based telecommunications company, the president of a Florida-based intermediary company, and two former Haitian government officials were charged in an indictment for their alleged roles in a foreign bribery, wire fraud, and money laundering scheme that lasted from at least November 2001 through March 2005. Joel Esquenazi, the former president of the telecommunications company; Carlos Rodriguez, the former executive vice-president of the telecommunications company; Marguerite Grandison, the former president of Telecom Consulting Services Corp.; Robert Antoine, a former director of international relations at the Republic of Haiti's state-owned national telecommunications company, Telecommunications D'Haiti (Haiti Teleco); and Jean Rene Duperval, another former director of international relations at Haiti Teleco, were charged in connection with a scheme whereby the telecommunications company paid more than \$800,000 to shell companies, including Grandison's Telecom Consulting Services Corp., to be used for bribes to foreign officials of Haiti Teleco. The purpose of these bribes was to obtain various business advantages from the Haitian officials for the telecommunications company, including issuing preferred telecommunications rates, reducing the number of minutes for which payment was owed, and giving a variety of credits toward owed sums, as well as to defraud the Republic of Haiti of revenue.

Previously, on April 22, 2009, Juan Diaz, the president of J.D. Locator Services Inc., a Florida-based intermediary, and Antonio Perez, the former controller of the Florida-based telecommunications company, were charged in connection with their roles in the alleged foreign bribery scheme. According to court documents, from 1998 to 2003, Diaz and Perez conspired to make "side payments" totaling \$1 million to the Haitian government officials through a shell company belonging to Diaz, all on behalf of the Florida-based telecommunications company.

On February 1, 2010, Jean Fourcand, the president of Fourcand Enterprises, Inc., another intermediary company, was charged in a one-count criminal information with engaging in monetary transactions involving property derived from the scheme to bribe the former Haitian government officials. Specifically, between November 2001 and August 2002, Fourcand received funds originating from this and other U.S. telecommunications companies for the benefit of Robert Antoine. A portion of these funds came in the form of a check from J.D. Locator Services Inc., and a portion of these funds were used to engage in a real estate transaction that benefitted Antoine.

Subsequently, on July 13, 2011, Cinergy Telecommunications Inc., Cinergy's president and director, the president of Florida-based Telcom Consulting Corp., and two former Haitian government officials were charged in a superseding indictment for their alleged roles in a foreign bribery, wire fraud and money laundering scheme that lasted from December 2001 through January 2006. Cinergy, a privately owned telecommunications company headquartered in Miami, Florida; Washington Vasconez Cruz, president and chief operating officer of Cinergy and president of Uniplex; Amadeus Richers, former director of Cinergy and Uniplex; Patrick Joseph, former director general for telecommunications at Haiti Teleco; Jean Rene Duperval, another former director of international relations at Haiti Teleco; and Marguerite Grandison, the former president of Telecom Consulting Services Corp., were charged in connection with a scheme whereby Cinergy and its related company, Uniplex Telecommunications Inc.,

allegedly paid more than \$1.4 million to shell companies to be used for bribes to foreign officials of Haiti Teleco.

According to court documents, Cinergy and Uniplex, executed a series of contracts with Haiti Teleco that allowed the companies' customers to place telephone calls to Haiti. The bribe payments were allegedly authorized by Washington Vasconez Cruz and Amadeus Richers, and were allegedly paid to Haitian government officials at Haiti Teleco, including Patrick Joseph and Jean Rene Duperval. According to the superseding indictment, the purpose of these bribes was to obtain various business advantages from the Haitian officials for Cinergy and Uniplex, including preferred telecommunications rates and credits toward sums owed. To conceal the bribe payments, the defendants allegedly used various shell companies to receive and forward the payments, including J.D. Locator Services, Fourcand Enterprises and Telecom Consulting Services.

The superseding indictment also charges Jean Rene Duperval and Marguerite Grandison with laundering corrupt payments authorized by Joel Esquenazi and Carlos Rodriguez on behalf of another Florida based telecommunications company.

On January 19, 2012, Cinergy Telecommunications Inc., Cinergy's president, vice-president, and director, the president of Florida-based Telcom Consulting Corp., and two former Haitian government officials were charged in a superseding indictment for their alleged roles in a foreign bribery, wire fraud and money laundering scheme that lasted from December 2001 through January 2006.

#### Criminal Disposition:

On May 15, 2009, Juan Diaz and Antonio Perez pleaded guilty in the U.S. District Court for the Southern District of Florida. Juan Diaz was sentenced on July 30, 2010, to 57 months' imprisonment and ordered to pay \$73,824 in restitution and to forfeit \$1,028,851. Antonio Perez was sentenced on January 21, 2011, to 24 months' imprisonment followed by two years' supervised release, and he was ordered to forfeit \$36,375. Diaz's and Perez's terms of imprisonment were later reduced following a Rule 35 motion.

On February 19, 2010, Jean Fourcand pleaded guilty to a one count criminal information charging him money laundering and agreed to forfeit \$18,500. Fourcand was sentenced to six months' imprisonment on May 3, 2010. Fourcand's term of imprisonment was later reduced following a Rule 35 motion.

On March 12, 2010, Robert Antoine pleaded guilty to conspiracy to commit money laundering. By pleading guilty, Antoine became the first foreign official ever convicted of money laundering in the United States where the specified unlawful activity to which the laundered funds related was a felony violation of the FCPA. On June 1, 2010, Antoine was sentenced to 48 months' imprisonment and ordered to pay \$1,852,209 in restitution and to forfeit \$1,580,771. Antoine's term of imprisonment was later reduced following a Rule 35 motion.

Joel Esquenazi and Carlos Rodriguez went to trial on July 18, 2011, in the U.S. District Court for the Southern District of Florida. On August 5, 2011, Esquenazi and Rodriguez were found guilty on all charged counts. On October 25, 2011, Joel Esquenazi was sentenced to a term of 180 months' imprisonment followed by 3 years' supervised release. This is the longest sentence ever imposed in a case involving the FCPA. Carlos Rodriguez was sentenced to 84 months in prison followed by 3 years' supervised release. The defendants were also ordered to forfeit \$3.09 million. Both Esquenazi and Rodriguez have appealed their convictions.

Patrick Joseph pleaded guilty to one count of conspiracy to commit money laundering on February 8, 2012. On July 6, 2012, he was sentenced, in a 5K1.1 downward departure, to 1 year and 1 day in prison, followed by 1 year of supervised release, and was ordered to forfeit \$955,596.69.

Jean Rene Duperval went to trial on March 1, 2012, in the U.S. District Court for the Southern District of Florida. On March 13, 2012, he was found guilty of two counts of conspiracy to commit money laundering and 11 counts of money laundering. On May 21, 2012, Duperval was sentenced to 108 months' imprisonment, followed by three years' supervised release and ordered to forfeit more than \$497,000. Duperval has appealed his conviction.

Marguerite Grandison received pre-trial diversion. The Department dismissed charges against Cinergy Telecommunications Inc.

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#### **41. Military and Law Enforcement Products Industry**

##### **Resulting Criminal Enforcement Action(s):**

- A. United States v. Richard T. Bistrong (D.D.C., January 21, 2010)**
- B. United States v. Amaro Goncalves, *et al.* (D.D.C., December 11, 2009)**

##### **Entities and Individuals:**

- Richard T. Bistrong, Vice President for International Sales, charged January 21, 2010.
- Daniel Alvarez, President, indicted December 11, 2009.
- Lee Allen Tolleson, Director of Acquisitions and Logistics, indicted December 11, 2009.
- Andrew Bigelow, Managing Partner and Director of Government Programs, indicted December 11, 2009.
- Pankesh Patel, Managing Director, indicted December 11, 2009.
- John Benson Wier III, President, indicted December 11, 2009.
- David R. Painter, Chairman, indicted December 11, 2009.
- Lee M. Wares, Director, indicted December 11, 2009.
- Jonathan M. Spiller, Owner and President, indicted December 11, 2009.
- Michael Sacks, Owner and co-CEO, indicted December 11, 2009.
- Israel (Wayne) Weisler, Owner and co-CEO, indicted December 11, 2009.
- R. Patrick Caldwell, CEO, indicted December 11, 2009.
- Stephen Giordanella, CEO, indicted December 11, 2009.
- John M. Mushriqui, Director of International Development, indicted December 11, 2009.
- Jeana Mushriqui, General Counsel and U.S. Manager, indicted December 11, 2009.
- John Gregory (Greg) Godsey, Owner, indicted December 11, 2009.
- Mark Frederick Morales, Agent, indicted December 11, 2009.
- Helmie Ashiblie, Vice President and Founder, indicted December 11, 2009.
- Yochanan (Yochi) Cohen, CEO, indicted December 11, 2009.
- Haim Geri, President, indicted December 11, 2009.
- Amaro Goncalves, Vice President of Sales, indicted December 11, 2009.
- Saul Mishkin, Owner and CEO, indicted December 11, 2009.
- Ofer Paz, President and CEO, indicted December 11, 2009.

##### **Criminal Charges:**

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to falsify books and records (Bistrong)
  - to commit money laundering (all defendants)
  - to export a controlled commodity without a license (Bistrong)
- Bribery of foreign officials (all defendants)

##### **Location and Time Period of Misconduct:**

- Bistrong: The Netherlands, 2001-2003; United Nations (U.N.), 2001-2006; Iraq, 2003-2004; Nigeria, 2006.
- Goncalves, *et al.*: Unidentified African Country, 2009.

Summary:

On January 18, 2010, 22 executives and employees of companies in the military and law enforcement products industry were arrested on charges of conspiracy to violate the FCPA, conspiracy to engage in money laundering, and substantive FCPA violations. The arrest of the 22 individual defendants, who were charged in 16 separate indictments, represented the single largest investigation and prosecution of individuals in the history of DOJ's enforcement of the FCPA, as well as the first large-scale use of undercover law enforcement techniques to uncover FCPA violations. The defendants are alleged to have engaged in a scheme to pay bribes to the minister of defense for a country in Africa. In fact, the scheme was part of an undercover operation, with no actual involvement from any minister of defense. As part of the undercover operation, the defendants allegedly agreed to pay a 20 percent "commission" to a sales agent, who the defendants believed represented the minister of defense for a country in Africa, in order to win a portion of a \$15 million deal to outfit the country's presidential guard. In reality, the "sales agent" was an undercover FBI agent. The defendants were told that half of that "commission" would be paid directly to the minister of defense. The defendants allegedly agreed to create two price quotations in connection with the deals, with one quote representing the true cost of the goods and the second quote representing the true cost, plus the 20 percent "commission." The defendants also allegedly agreed to engage in a small "test" deal to show the minister of defense that he would personally receive the 10 percent bribe.

On April 16, 2010, a superseding indictment was filed in the District of Columbia, consolidating the cases against these 22 defendants and charging them with participation in a single foreign-bribery related conspiracy. The superseding indictment also revealed that the 22 defendants allegedly agreed that the products that they would supply in connection with the "test" deal would be consolidated for shipment to the African country.

In another case, on January 21, 2010, Richard T. Bistrong was charged in a one-count criminal information with conspiracy to violate the anti-bribery and accounting provisions of the FCPA, as well as to export a controlled commodity without having first obtained a license from the U.S. Department of Commerce, in violation of the International Emergency Economic Powers Act (IEEPA) and the Export Administration Regulations. Bistrong, who was the vice-president of international sales for a Florida-based manufacturer of military, security, and law enforcement products ("the manufacturer"), is alleged to have taken part in a scheme to win contracts for the manufacturer with the United Nations (U.N.), the National Police Service Services Agency of the Netherlands (KLPD), and the Nigerian Independent National Election Commission (INEC) by paying bribes, via intermediaries, to U.N. procurement officials, a City of Rotterdam police office working on procurement matters for the KLPD, and an official with INEC, respectively. From 2001 through 2006, Bistrong also allegedly caused the falsification of the manufacturer's books and records by using false "net" invoices to conceal nearly \$4.4 million in payments to third-party intermediaries. In addition, Bistrong is alleged to have caused the export, from the U.S., of controlled ballistic armor vests and helmets to the Kurdistan Regional Government in Iraq without having obtained a required license from the Commerce Department.

Criminal Disposition:

Richard T. Bistrong pleaded guilty to one count of conspiracy to violate the FCPA on September 16, 2010. On July 31, 2012, he was sentenced to 18 months' imprisonment, followed by 3 years' supervised release. Daniel Alvarez pleaded guilty to two counts of conspiracy to violate the FCPA on March 1, 2011, and is currently awaiting sentencing. Haim Geri pleaded guilty to one count of conspiracy to violate the FCPA on April, 28, 2011, and is currently awaiting sentencing. Jonathan M. Spiller pleaded guilty to one count of conspiracy to violate the FCPA on March 29, 2011, and is currently awaiting sentencing. The sole charge against Giordanella was dropped on December 22, 2011. The trials for defendants Andrew Bigelow, Lee Allen Tolleson, John Benson Wier III, Pankesh Patel, John M. Mushriqui, Jeana Mushriqui, R. Patrick Caldwell, John Gregory (Greg) Godsey, and Mark Frederick Morales ended in mistrial due to hung juries. Charges against those defendants, as well as Amaro

Goncalves, Ofer Paz, Michael Sacks, Israel Weisler, Saul Mishkin, Yochanan (Yochi) Cohen, and Helmie Ashiblie, were withdrawn on February 21, 2012.

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## **42. NATCO Group Inc.**

### **Resulting Civil/Administrative Enforcement Action(s):**

- A. SEC v. NATCO Group Inc. (S.D. Tex., January 11, 2010)**
- B. In the Matter of NATCO Group Inc. (January 11, 2010)**

### **Entities and Individuals:**

- NATCO Group Inc., civil complaint filed January 11, 2010; cease-and-desist order issued January 11, 2010.
- TEST Automation & Controls, Inc., civil complaint filed against parent company.

### **Civil Charges:**

- Falsification of books and records
- Internal controls violations

**Location and Time Period of Misconduct:** Kazakhstan, 2007.

### **Summary:**

NATCO, a Delaware corporation headquartered in Houston and listed on the New York Stock Exchange, designs, manufactures, and markets oil and gas production equipment and systems that are used worldwide. On January 11, 2010, the SEC filed a civil complaint and commenced administrative proceedings against NATCO, alleging that the company violated the books and records and internal controls provisions of the FCPA in connection with a subsidiary's mischaracterization of certain illicit payments to Kazakh officials in the company's books and records. The wholly-owned subsidiary in question, TEST Automation & Controls, Inc. ("TEST"), is a Louisiana corporation that fabricates and sells control panels and packaged automation systems and provides field services associated with repair, maintenance, inspection and testing of onshore and offshore control systems.

According to the SEC's complaint, in June 2005, TEST's branch office in Kazakhstan ("TEST Kazakhstan") won a contract to provide instrumentation and electrical services in Kazakhstan. To perform the services, TEST Kazakhstan hired both expatriates and local Kazakh workers. Kazakhstan law required TEST to obtain immigration documentation before an expatriate worker entered the country. Accordingly, Kazakhstan immigration authorities periodically audited immigration documentation of TEST Kazakhstan and other companies operating in Kazakhstan for compliance with local law.

In February 2007 and September 2007, Kazakh immigration prosecutors conducted audits and claimed that TEST Kazakhstan's expatriate workers were working without proper immigration documentation. The prosecutors subsequently threatened to fine, jail or deport the workers if TEST Kazakhstan did not pay cash fines.

Believing the prosecutor's threats to be genuine, employees with TEST Kazakhstan sought guidance from TEST's senior management in Harvey, Louisiana, who authorized making the payments. TEST Kazakhstan employees used personal funds to pay the prosecutors \$25,000 in February and \$20,000 in September, and then obtained reimbursement from TEST.

For the February 2007 payment, TEST made a \$25,000 wire transfer to the affected employee. TEST inaccurately described the transfer as "an advance against his [the paying employee's] bonus payable in March." Moreover, the email noted the bonus would be "substantial," to further disguise the true reason for the transfer. In addition, TEST's letter to the bank providing the wire instructions inaccurately described the payment as a "Payroll Advance." After the wire transfer was transmitted, TEST inaccurately recorded the payment in its books and records as a salary advance.



For the September 2007 payment, TEST made a \$20,000 wire transfer to reimburse the affected employee. The wire transfer and journal entry in TEST's books inaccurately described the purpose of the transfer as "visa fines."

In addition to the misrepresentation of the February and September 2007 wire transfers, the SEC's complaint alleged that TEST knowingly reimbursed false invoices worth more than \$80,000. Specifically, TEST Kazakhstan used consultants to assist it in obtaining immigration documentation for its expatriate employees. One of these consultants did not have a license to perform visa services, but maintained close ties to an employee working at the Kazakh Ministry of Labor, the entity issuing the visas. On two instances, the consultant requested cash from TEST Kazakhstan to help him obtain the visas. Because Kazakh law requires companies seeking to withdraw cash from commercial bank accounts to submit supporting invoices, the consultant provided TEST Kazakhstan bogus invoices for "cable" from third-party entities he controlled. TEST Kazakhstan knew these invoices were false, but nonetheless presented them to Kazakh banks to withdraw the requested cash. TEST Kazakhstan later submitted the false invoices – which totaled in excess of \$80,000 – to TEST for reimbursement. TEST reimbursed these requests despite knowing the invoices mischaracterized the true purpose of the services rendered.

Civil Disposition:

In order to settle the civil charges filed by the SEC, NATCO agreed, without admitting or denying the SEC's allegations, to pay a \$65,000 civil penalty. In the related administrative proceedings, NATCO consented to the issuance of an order that requires the company to cease-and-desist from committing or causing any violations and future violations of the books and records and internal controls provisions of the FCPA.

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**43. UTStarcom Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re UTStarcom Inc. (December 31, 2009)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. UTStarcom, Inc. (N.D. Cal., December 31, 2009)**

Entities and Individuals:

- UTStarcom, Inc. (UTSI), non-prosecution agreement announced December, 31, 2009; civil complaint filed December 31, 2009.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 2001-2007; Thailand, 2001-2005; Mongolia, 2005.

Summary:

On December 31, 2009, UTStarcom, Inc. (UTSI), a global telecommunications company that designs, manufactures, and sells network equipment and handsets, entered into a non-prosecution agreement with the Department of Justice regarding the improper provision of travel and other things of

value to employees at state-owned telecommunications firms in the People's Republic of China, in violation of the FCPA. On the same date, the SEC filed a settled civil complaint against UTSI in relation to this conduct.

As part of these agreements, UTSI acknowledged responsibility for the actions of its wholly-owned subsidiary, UTStarcom China Co. Ltd. (UTS-China), and its employees and agents, who arranged and paid for employees of Chinese state-owned telecommunications companies to travel to popular tourist destinations in the United States, including Hawaii, Las Vegas, and New York City. The trips were purportedly for individuals to participate in training at UTSI facilities. In fact, UTSI had no facilities in those locations and conducted no training. UTS-China then falsely recorded these trips as "training" expenses, while the true purpose for providing these trips was to obtain and retain lucrative telecommunications contracts.

The civil complaint filed by the SEC also stated that UTSI had arranged for expensive gifts and all-expense paid trips for officials from government customers in Thailand. In addition, the SEC stated that UTSI made sham payments to a Mongolian consulting company for the purpose of bribing a Mongolian government official to help UTSI obtain a favorable ruling in a license dispute.

*Criminal Disposition:*

As part of the non-prosecution agreement, UTSI agreed to pay a \$1.5 million fine, adopt rigorous internal controls, and continue cooperating fully with the Department.

*Civil Disposition:*

Pursuant to its settlement with the SEC, UTSI agreed to pay a \$1.5 million civil penalty and to provide FCPA compliance reports for four years.

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#### **44. Ports Engineering Consultants Corporation**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. John W. Warwick (E.D. Va., December 15, 2009)**
- B. United States v. Charles Paul Edward Jumet (E.D. Va., November 10, 2009)**

*Entities and Individuals:*

- Ports Engineering Consultants Corporation (PECC) (company ceased to operate prior to prosecution)
- Overman Associates (company ceased to operate prior to prosecution)
- Overman de Panama (company ceased to operate prior to prosecution)
- John W. Warwick, President of PECC, Overman Associates and Overman de Panama, indicted December 15, 2009.
- Charles Paul Edward Jumet, Vice President and President of PECC and Vice President of Overman de Panama and Overman Associates, charged November 10, 2009.

*Criminal Charges:*

- Conspiracy to bribe foreign officials (all defendants)
- Making a false statement (Jumet)

*Location and Time Period of Misconduct:* Panama, 1997-2003.

*Summary:*

On November 10, 2009 and December 15, 2009, respectively, Charles Paul Edward Jumet and John W. Warwick were charged in connection with a conspiracy to make corrupt payments to Panamanian government officials in exchange for certain maritime contracts. Jumet was charged in a two-count criminal information with conspiracy to bribe foreign officials in violation of the FCPA and with making a false statement to the FBI. Warwick, the former president of Ports Engineering Consultants Corporation (PECC), was indicted on one-count of conspiracy to authorize and cause corrupt payments to be made to foreign government officials for the purpose of securing business for PECC, in violation of the FCPA.

According to court documents, from 1997 through approximately July 2003, Warwick, Jumet, and others conspired to authorize and cause corrupt payments totaling more than \$200,000 to be made to the former administrator and deputy administrator of the Panama Maritime Ports Authority, as well as to a former, high-ranking elected executive official of the Republic of Panama. These corrupt payments were made so that the Panamanian officials would award contracts to maintain lighthouses and buoys along Panama's waterways to PECC, a company incorporated under the laws of Panama and affiliated with Overman Associates, an engineering firm based in Virginia. In 1997, the Panamanian government awarded PECC a no-bid 20-year concession to perform these duties. As a result of these contracts, PECC earned approximately \$18 million in revenue from 1997 to 2000. In 2000, Panama's Comptroller General Office suspended the contract while it investigated the government's decision to award PECC a contract without soliciting a bid from any other entities. In 2003, the Panamanian government resumed making payments to PECC.

*Criminal Disposition:*

On November 13, 2009, Charles Jumet pleaded guilty in the Eastern District of Virginia. As part of his plea agreement, Jumet agreed to cooperate with the Department of Justice in its ongoing investigation. On April 19, 2010, Jumet was sentenced to 87 months' imprisonment, 3 years' supervised release, and a \$15,000 criminal fine. On February 10, 2010, Warwick pleaded guilty to the one-count indictment and agreed to forfeit \$331,000. Warwick was sentenced on June 25, 2010, to 37 months' imprisonment followed by 2 years' supervised release. He was also ordered to forfeit the agreed-upon amount of \$331,000.

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**45. AGCO Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. AGCO Limited (D.D.C., September 30, 2009)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. AGCO Corporation (D.D.C., September 30, 2009)**

*Entities and Individuals:*

- AGCO Corporation (AGCO Corp.), deferred prosecution agreement filed September 30, 2009; civil complaint filed September 30, 2009.
- AGCO Limited (AGCO Ltd.), charged September 30, 2009.

*Criminal Charges:*

- Conspiracy:
  - to falsify books and records
  - to commit wire fraud

*Civil Charges:*

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

AGCO Ltd., the wholly owned U.K. subsidiary of AGCO Corp., a U.S. corporation based in Duluth, Georgia, was charged on September 30, 2009 with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. These charges stemmed from the Department's investigation into the United Nations (U.N.) Oil-for-Food Program (OFFP). According to court documents, AGCO Corp. admitted that between 2000 and 2003, AGCO Ltd., with the assistance of a Jordanian agent, paid approximately \$553,000 to the former government of Iraq to secure three contracts to sell agricultural equipment and parts by inflating the price of the contracts by 13 to 21 percent before submitting the contracts to the U.N. for approval. The company concealed from the U.N. that the price of the contracts had been inflated and then used the additional funds to pay a kickback to the former Iraqi Ministry of Agriculture.

On September 30, 2009, the SEC filed a civil complaint against AGCO Corporation in the District of Columbia, alleging violations of the internal controls and books and records provisions of the FCPA in relation to the same underlying conduct. According to the complaint, AGCO Corp. and its subsidiaries made approximately \$5.9 million in kickback payments (or "after sale service fees" (ASSFs)) in connection with their contracts to sell humanitarian goods to Iraq. AGCO Corp.'s total gains from contracts in which ASSFs were paid was \$13,907,393.

Criminal Disposition:

On September 30, 2009, AGCO Corp. entered into a deferred prosecution agreement with the Department of Justice. As part of this agreement, AGCO Corp. acknowledged responsibility for the conduct of its subsidiary, AGCO Ltd., and agreed to pay a \$1.6 million criminal fine. The deferred prosecution agreement also required that AGCO Corp. and its subsidiaries, including AGCO Ltd., cooperate fully with the Justice Department's ongoing investigation.

AGCO Corp. also agreed to a disposition resolving an ongoing investigation by the Danish State Prosecutor for Serious Economic Crime, whereby AGCO Corp. agreed to pay approximately \$630,000 in disgorgement of profits. These charges were based on two OFFP contracts executed by AGCO Corp.'s Danish subsidiary, AGCO Denmark A/S.

Civil Disposition:

Contemporaneous with the criminal settlement, the SEC filed a settled action against AGCO Corp. enjoining it from future violations and requiring it to pay \$13.9 million in disgorgement and \$2 million in prejudgment interest, as well as a \$2.4 million civil penalty, in relation to the sixteen OFFP contracts.

**46. Faro Technologies Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re Faro Technologies Inc. (June 5, 2008)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Oscar H. Meza (D.D.C., August 28, 2009)**

**C. In the Matter of Faro Technologies, Inc. (June 5, 2008)**

Entities and Individuals:

- Faro Technologies Inc., non-prosecution agreement announced June 5, 2008; cease-and-desist order issued June 5, 2008.
- Oscar H. Meza, Director of Asia-Pacific Sales, civil complaint filed August 28, 2009.

*Criminal Charges:*

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)

*Civil Charges:*

- Bribery of foreign officials (Faro and Meza)
- False accounting (Meza)
- False statements to accountants (Meza)
- Internal controls violations (Faro)
- Falsification of books and records (Faro)
- Aiding and abetting Faro's bribery of foreign officials (Meza)
- Aiding and abetting Faro's internal controls violations (Meza)
- Aiding and abetting Faro's falsification of books and records (Meza)

*Location and Time Period of Misconduct:* China, 2003-2006.

*Summary:*

On June 5, 2008, Faro Technologies Inc. (Faro), a public company headquartered in Lake Mary, Fla., which develops and markets portable computerized measurement devices and software, entered into a non-prosecution agreement with the Department of Justice in relation to a scheme to make corrupt payments to Chinese government officials in violation of the FCPA. Simultaneously, the SEC commenced administrative proceedings against Faro, seeking to enjoin it from further violations of the FCPA. In a related action, the SEC filed a civil complaint against Oscar H. Meza on August 28, 2009. Meza, a U.S. citizen, had served as the Vice-President for Asia-Pacific Sales and the Director of Asia-Pacific Sales for Faro during the period in question. The Commission charged Meza with violations of the anti-bribery, books and records and internal controls provisions of the FCPA, and with aiding and abetting Faro's violations of the anti-bribery, books and records and internal controls provisions of the FCPA.

According to the statement of facts, Faro began direct sales of its products in China in 2003 through its subsidiary, Faro China, which is based in Shanghai. On several occasions in 2004 and 2005, Meza authorized other Faro employees to make corrupt payments, termed "referral fees" within Faro, directly to employees of state-owned or controlled entities in China to secure business for Faro.

Ultimately, Meza authorized a total of \$444,492 in corrupt payments disguised as referral fees, which allowed Faro to secure contracts worth approximately \$4.5 - \$4.9 million in sales and \$1.4 million in net profit. Faro also falsely recorded these improper payments in its books and records, inaccurately describing the bribe payments as referral fees. Also, between May 2003 and February 2006, Faro failed to devise and maintain a system of internal controls with respect to foreign sales activities sufficient to ensure compliance with the FCPA.

The statement of facts also reveals that certain Faro employees decided in 2005 to route the corrupt payments to Chinese government officials through a shell company to "avoid exposure," according to internal emails. As a result, in January 2005, Faro China entered into a bogus services contract with an intermediary, using it to pay the bribes on behalf of Faro. The intermediary aggregated the bribe payments it paid on behalf of Faro and sent regular invoices to Faro for payment based on its services contract.

*Criminal Disposition:*

In recognition of Faro's voluntary disclosure and thorough review of the improper payments, its cooperation with the Department's investigation, the company's implementation of, and commitment to

implement in the future, enhanced compliance policies and procedures, and the company's agreement to engage an independent corporate monitor, the Department agreed to enter into a two-year non-prosecution agreement with Faro. As part of this agreement, Faro agreed to pay a criminal fine of \$1.1 million.

Civil Disposition:

As part of the SEC's settled administrative enforcement action against Faro, the company agreed to the entry of a cease and desist order and agreed to pay approximately \$1.85 million in disgorgement and prejudgment interest.

In the civil suit filed against Meza by the SEC, the court entered a final judgment order whereby Meza was required to pay a \$30,000 civil penalty, as well as \$26,707 in disgorgement and prejudgment interest.

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**47. Nature's Sunshine Products Inc.**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. Nature's Sunshine Products, Inc., et al. (D. Utah, July 31, 2009)**

Entities and Individuals:

- Nature's Sunshine Products Inc. (NSP), civil complaint filed July 31, 2009.
- Douglas Faggioli, CEO, civil complaint filed July 31, 2009.
- Craig D. Huff, CFO, civil complaint filed July 31, 2009.

Civil Charges:

- Bribery of foreign officials (NSP)
- Fraud in connection with the purchase or sale of securities (NSP)
- Disclosure violations (NSP)
- Internal controls violations (all defendants)
- Falsification of books and records (all defendants)

Location and Time Period of Misconduct: Brazil, 2000-2002.

Summary:

On July 31, 2009, the SEC filed a settled enforcement action against Nature's Sunshine Products Inc. (NSP), a manufacturer of nutritional and personal care products, as well as its Chief Executive Officer Douglas Faggioli and its former Chief Financial Officer Craig D. Huff. This complaint alleged that the defendants violated the antifraud, issuer reporting, books and records, and internal controls provisions of federal securities laws in connection with a series of cash payments to Brazilian government officials in 2000 and 2001. The complaint alleged that, faced with changes to Brazilian regulations which resulted in classifying many of NSP's products as medicines, which would have required NSP to register many of its products for importation and sale, NSP's Brazilian subsidiary made a series of cash payments to customs officials in order to induce them to allow NSP to import unregistered products into that country. NSP's Brazilian subsidiary then purchased false documentation to conceal the nature of the payments, which were later falsely recorded in the books and records of NSP.

The complaint also alleged that Faggioli and Huff, in their capacities as control persons, violated the books and records and internal controls provisions of the FCPA in connection with the Brazilian cash payments. In addition, it is alleged that NSP failed to disclose the payments to Brazilian customs agents in its filings with the SEC.

Civil Disposition:

NSP, Faggioli and Huff, without admitting or denying the allegations in the complaint, consented to the entry of a final judgment that would enjoin each of the defendants from future violations of the above-stated provisions and would order NSP to pay a civil penalty of \$600,000, and Faggioli and Huff to each pay a civil penalty of \$25,000.

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**48. Helmerich & Payne, Inc.**

**Resulting Criminal Enforcement Action(s):**

**A. In Re Helmerich & Payne, Inc. (July 30, 2009)**

**Resulting Civil/Administrative Enforcement Action(s):**

**B. In the Matter of Helmerich & Payne, Inc. (July 30, 2009)**

**Entities and Individuals:**

- Helmerich & Payne, Inc. (H&P), non-prosecution agreement announced July 30, 2009; cease-and-desist order issued July 30, 2009.

**Criminal Charges:**

- Bribery of foreign officials
- Falsification of books and records

**Civil Charges:**

- Internal controls violations
- Falsification of books and records

**Location and Time Period of Misconduct:** Venezuela, 2003-2008; Argentina, 2004-2008.

**Summary:**

On July 30, 2009 Helmerich & Payne (H&P) entered into a non-prosecution agreement with the Department of Justice and the SEC initiated a settled administrative proceeding against H&P. These enforcement actions stemmed from a series of improper payments by H&P to government officials in Argentina and Venezuela in violation of the FCPA. H&P, a Delaware corporation, is headquartered in Tulsa, Oklahoma, and is listed on the New York Stock Exchange. The company provides oil drilling rigs, equipment and personnel on a contract basis, primarily in the United States and South America, with subsidiaries in both Argentina and Venezuela.

The improper payments were made to officials of the Argentine and Venezuelan customs services, both government agencies, made in order to import and export goods that were not within regulations, to import goods that could not lawfully be imported, and to evade higher duties and taxes on the goods. From 2004 through 2008, H&P Argentina paid Argentine customs officials approximately \$166,000, which allowed it to avoid more than an estimated \$186,000 in expenses it would have otherwise incurred if it had properly imported and exported the equipment and materials. In addition, from 2003 through 2008, H&P Venezuela made corrupt payments to Venezuelan customs officials totaling approximately \$19,673, which allowed it to avoid more than an estimated \$134,000 in expenses it would have otherwise incurred if it had properly imported and exported the equipment and materials.

H&P and its subsidiaries then falsely, or at least misleadingly, described these improper payments in H&P's books and records. For instance, the Argentine payments were described as attributable to "additional assessments," "extra costs," or "extraordinary expenses." Similarly, the Venezuelan payments were described as, for instance, "urgent processing," "urgent dispatch," or "customs processing."

**Criminal Disposition:**

As part of the non-prosecution agreement, H&P acknowledged responsibility for the actions of its subsidiaries, employees and agents who made the improper payments. The agreement required that H&P pay a \$1 million penalty, implement rigorous internal controls, and cooperate fully with the Department.



Civil Disposition:

In a related matter, H&P reached a settlement with the SEC, under which it agreed to pay \$320,604 in disgorgement of profits and \$55,077.22 in pre-judgment interest, and agreed to an entry of a cease-and-desist order.

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**49. Avery Dennison Corporation**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. Avery Dennison Corporation (C.D. Cal., July 28, 2009)**

**B. In the Matter of Avery Dennison Corporation (July 28, 2009)**

Entities and Individuals:

- Avery Dennison Corporation, civil complaint filed July 28, 2009; cease-and-desist order issued July 28, 2009.

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: China, 2002-2005.

Summary:

On July 28, 2009, the SEC filed a settled civil action and a settled administrative order against Avery Dennison Corporation (Avery), a Pasadena, California-based multinational corporation, alleging violations of the FCPA in connection with improper payments and promises of improper payments to foreign officials by Avery's Chinese subsidiary and several entities Avery acquired. The SEC's civil complaint and administrative order charged that, from 2002 through 2005, the Reflectives Division of Avery (China) Co. Ltd. (Avery China) paid or authorized the payments of kickbacks, sightseeing trips, and gifts to Chinese government officials. The amount of illegal payments actually paid amounted to approximately \$30,000.

In one transaction, Avery China secured a sale to a state-owned end user by agreeing to pay a Chinese official a kickback of nearly \$25,000 through a distributor. Avery China realized \$273,313 in profit from this transaction, which it inaccurately booked as a sale to the distributor rather than to the end user. In addition, after Avery acquired a company in June 2007, employees of the acquired company continued their pre-acquisition practice of making illegal petty cash payments to customs or other officials in several foreign countries, resulting in illegal payments of approximately \$51,000. Avery failed to accurately record these payments and gifts in the company's books and records, and failed to implement or maintain a system of internal accounting controls sufficient to detect and prevent such illegal payments or promises of illegal payments.

Civil Disposition:

In the administrative proceeding, the SEC ordered Avery to cease and desist from such violations, and to disgorge \$273,213, together with \$45,257 in prejudgment interest. In the federal civil action, Avery agreed to the entry of a final judgment requiring it to pay a civil penalty in the amount of \$200,000.

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**50. Control Components, Inc.**

**Related Criminal Enforcement Action(s):**

- A. United States v. Control Components, Inc. (C.D. Cal., July 22, 2009)**
- B. United States v. Stuart Carson, et al. (C.D. Cal., April 8, 2009)**
- C. United States v. Richard Morlok (C.D. Cal., January 7, 2009)**
- D. United States v. Mario Covino (C.D. Cal., December 17, 2008)**

**Entities and Individuals:**

- Control Components, Inc. (CCI), charged July 22, 2009.
- Stuart Carson, CEO, indicted April 8, 2009.
- Hong (Rose) Carson, Director of Sales for China and Taiwan, indicted April 8, 2009.
- Paul Cosgrove, Director of Worldwide Sales, indicted April 8, 2009.
- David Edmonds, Vice President of Worldwide Customer Service, indicted April 8, 2009.
- Flavio Ricotti, Vice-President and Head of Sales for Europe, Africa, and the Middle East, indicted April 8, 2009.
- Han Yong Kim, President of CCI's Korean office, indicted April 8, 2009.
- Richard Morlok, Finance Director, charged January 7, 2009.
- Mario Covino, Director of Worldwide Factory Sales, charged December 17, 2008.

**Criminal Charges:**

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to commit commercial bribery (all defendants except Covino and Morlok)
- Bribery of foreign officials (all defendants except Morlok and Covino)
- Commercial bribery (Ricotti, Edmonds, and Cosgrove)
- Destruction of Records (Hong Carson)

**Location and Time Period of Misconduct:** Over 36 countries, including China, Malaysia, South Korea, India, United Arab Emirates, Romania, Brazil, 1998-2007.

**Summary:**

On July 22, 2009, Control Components, Inc. (CCI), a Rancho Santa Margarita, California-based company, was charged in a three count criminal information with violations of the FCPA and the Travel Act, stemming from a decade-long scheme to secure contracts in approximately 36 countries by paying bribes to officials and employees of various foreign state-owned companies as well as foreign and domestic private companies. Previously, two former executives of CCI, Mario Covino and Richard Morlok, were each charged with one count of conspiracy to bribe foreign officials in violation of the FCPA (on December 17, 2008 and January 7, 2009, respectively). On April 9, 2009, a grand jury in the Central District of California returned an indictment against six additional former CCI executives for their alleged roles in this bribery scheme.

According to court documents, from 2003 through 2007, CCI, a manufacturer of service control valves for use in the nuclear, oil and gas, and power generation industries, made approximately 236 corrupt payments to officers and employees of foreign state-owned and private companies in more than 30 countries. Sales from these corrupt payments resulted in net profits to the company of approximately \$46.5 million.

Covino, CCI's former Director of Worldwide Factory Sales, was charged in connection with his role in causing and approving approximately \$1 million in corrupt payments to foreign government officials from March 2003 through August 2007, for the purpose of obtaining business from state-owned

enterprises in several countries, including, but not limited to, Brazil, China, India, Korea, Malaysia, and the United Arab Emirates (UAE). CCI ultimately earned approximately \$5 million in profits from the contracts it obtained as a result of these corrupt payments.

Morlok, CCI's former Finance Director, was charged in connection with his role in a scheme to pay approximately \$628,000 in bribes from 2003 through 2006 to foreign government officials in several countries, including China, Korea, Romania, and Saudi Arabia. CCI ultimately earned approximately \$3.5 million in profits from the contracts it obtained as a result of these corrupt payments.

According to the indictment of Stuart Carson, Hong (Rose) Carson, Paul Cosgrove, David Edmonds, Flavio Ricotti, and Han Yong Kim, these six defendants caused CCI to pay approximately \$4.9 million in bribes, in violation of the FCPA, to officials of foreign state-owned companies and approximately \$1.95 million in bribes, in violation of the Travel Act, to officers and employees of foreign and domestic privately owned companies. The alleged corrupt payments were made to foreign officials at state-owned entities including Jiangsu Nuclear Power Corp. (China), Guohua Electric Power (China), China Petroleum Materials and Equipment Corp., PetroChina, Dongfang Electric Corporation (China), China National Offshore Oil Corporation, Korea Hydro and Nuclear Power, Petronas (Malaysia), and National Petroleum Construction Company (UAE).

#### Criminal Disposition:

On July 31, 2009, CCI pleaded guilty in the Central District of California. As part of the plea agreement, CCI agreed to pay a criminal fine of \$18.2 million; create, implement and maintain a comprehensive anti-bribery compliance program; retain an independent compliance monitor for a three-year period to review the design and implementation of CCI's anti-bribery compliance program and to make periodic reports to CCI and the Department; serve a three-year term of organizational probation; and continue to cooperate with the Department in its ongoing investigation.

Covino pleaded guilty to the one count criminal information on January 8, 2009, and agreed to cooperate with the Department in its ongoing investigation. As part of his plea agreement, Covino also admitted to providing false and misleading responses to internal auditors during a 2004 internal audit of the company's commission payments, and to deleting emails and instructing others to delete emails that referred to corrupt payments, for the purpose of obstructing the internal audit. Covino is currently scheduled to be sentenced on November 5, 2012.

Morlok pleaded guilty to the same charge on February 3, 2009. As part of his plea agreement, Morlok also admitted that he provided false and misleading information regarding the commission payments to internal and external auditors in 2004. Morlok is currently scheduled to be sentenced on November 5, 2012.

On April 17, 2012, Stuart Carson and his wife Hong "Rose" Carson pleaded guilty to one count each of violating the FCPA. The Carson's are scheduled to be sentenced on October 15, 2012.

Cosgrove pleaded guilty on May 29, 2012, to one count of commercial bribery in violation of the FCPA. On September 13, 2012, taking into consideration Cosgrove's cardiac issues, he was sentenced to 13 months' home detention.

Flavio Ricotti was arrested in Frankfurt, Germany on February 14, 2010, and he was subsequently extradited to the United States on July 2, 2010. Ricotti pleaded guilty on April 28, 2011, and is currently scheduled to be sentenced on December 10, 2012.

On June, 14, 2012, David Edmonds pleaded guilty to one count of violating the FCPA. He is scheduled to be sentenced on November, 19, 2012.

Han Yong Kim remains a fugitive.

## **51. United Industrial Corporation**

### **Resulting Civil/Administrative Enforcement Action(s):**

- A. In the Matter of United Industrial Corporation (May 29, 2009)**
- B. SEC v. Thomas Wurzel (D.D.C., May 29, 2009)**

### **Entities and Individuals:**

- United Industrial Corporation, cease-and-desist order issued May 29, 2009.
- ACL Technologies, Inc. (parent was subject to enforcement action).
- Thomas Wurzel, President of ACL Technologies, Inc., civil complaint filed May 29, 2009.

### **Civil Charges:**

- Bribery of foreign officials (all defendants)
- Internal controls violations (all defendants)
- Falsification of books and records (UIC)
- False accounting (Wurzel)
- Aiding and abetting UIC's bribery of foreign officials (Wurzel)
- Aiding and abetting UIC's falsification of books and records (Wurzel)

### **Location and Time Period of Misconduct:** Egypt, 2001-2002.

### **Summary:**

On May 29, 2009, the SEC filed a settled enforcement action in the U.S. District Court for the District of Columbia against Thomas Wurzel, the former President of ACL Technologies, Inc. (ACL), formerly a subsidiary of United Industrial Corporation (UIC), which provided aerospace and defense systems. In a related action, the SEC also instituted, on May 29, 2009, a settled administrative proceeding against UIC.

The Commission's complaint against Wurzel alleged that he authorized illicit payments to an Egyptian-based agent while he knew or consciously disregarded the high probability that the agent would offer, provide, or promise at least a portion of such payments to Egyptian Air Force officials for the purpose of influencing these officials to award business related to a military aircraft depot in Cairo, Egypt to UIC. In relation to this misconduct, the Commission charged Wurzel with violations of the anti-bribery, books and records and internal controls provisions of the FCPA, and with aiding and abetting UIC's violations of the anti-bribery and books and records provisions of the FCPA.

The Commission's complaint alleges that from late 2001 through 2002, Wurzel authorized three forms of illicit payments to the agent: (1) payments to the agent ostensibly for labor subcontracting work; (2) a \$100,000 advance payment to the agent in June 2002 for "equipment and materials;" and (3) a \$50,000 payment to the agent in November 2002 for "marketing services." Furthermore, Wurzel later directed his subordinates to create false invoices to conceal the fact that the \$100,000 "advance payment" in June 2002 was never repaid. As a result, UIC, through ACL, was awarded a contract with gross revenues and net profits of approximately \$5.3 million and \$267,000, respectively.

### **Civil Disposition:**

Without admitting or denying the allegations contained in the complaint, Wurzel consented to the entry of a final judgment permanently enjoining him from future violations of the FCPA and ordering him to pay a \$35,000 civil penalty.

On May 29, 2009, without admitting or denying the SEC's findings, UIC agreed to an SEC order requiring it to cease-and-desist from committing or causing violations or future violations of the anti-

bribery, books and records, and internal controls provisions of the FCPA. In addition, UIC was ordered to pay \$267,571 in disgorgement and \$70,108.42 in prejudgment interest.

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## **52. Novo Nordisk A/S**

### **Resulting Criminal Enforcement Action(s):**

#### **A. United States v. Novo Nordisk A/S (D.D.C., May 11, 2009)**

### **Resulting Civil/Administrative Enforcement Action(s):**

#### **B. SEC v. Novo Nordisk A/S (D.D.C., May 11, 2009)**

### **Entities and Individuals:**

- Novo Nordisk A/S, charged May 11, 2009; civil complaint filed May 11, 2009.

### **Criminal Charges:**

- Conspiracy:
  - to commit wire fraud
  - to falsify books and records

### **Civil Charges:**

- Internal controls violations
- Falsification of books and records

### **Location and Time Period of Misconduct:** Iraq, 2001-2003.

### **Summary:**

On May 11, 2009, Novo Nordisk A/S (Novo), a Danish corporation based in Bagsvaerd, Denmark, was charged in a one-count criminal information with conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Novo in the U.S. District Court for the District of Columbia.

According to court documents, between 2001 and 2003, a Jordan-based agent acting on behalf of Novo, an international manufacturer of insulin, medicines and other pharmaceutical supplies, made improper payments worth approximately \$1.4 million to the former Iraqi government in order to obtain contracts with the Iraqi Ministry of Health to provide insulin and other medicines as part of the Oil-for-Food Program (OFFP).

Novo engaged its long-time Jordan-based agent to submit bids on Novo's behalf to Kimadia, the Iraqi State Company for the Importation and Distribution of Drugs and Medical Appliances, a state-owned company which was part of the Iraqi Ministry of Health. Two branches of Novo Nordisk – RONE, based in Athens, Greece, and NEO, based in Amman, Jordan – handled the sales to the Iraq and supplied the agent with bid prices for each contract. In late 2000 or early 2001, a Kimadia import manager advised the agent that Kimadia required Novo Nordisk to pay a ten percent kickback in order to obtain a contract under the Program. The Kimadia import manager told the agent that Novo Nordisk should increase its prices by ten percent and pay that amount to Kimadia. By doing so, Novo would recover the secret kickback from the U.N. escrow account when the contract, with the inflated price, was subsequently approved for disbursement and paid by the U.N.

Beginning in 2001 and continuing through 2003, Novo paid these kickbacks, characterized as "after-sales service fees" ("ASSFs"), by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval. Novo also concealed from the U.N. the fact that the price contained a kickback to the former Iraqi government. In addition, on at least two occasions in 2001, Novo paid increased commissions to its agent to pay the kickbacks to Kimadia. The agent's commission was increased under the guise that the payment was used to cover the agent's increased distribution and

marketing costs. All together, Novo paid over \$1.4 million in kickbacks payments on eleven contracts through the agent, and agreed to pay approximately \$1.3 million in ASSFs on two additional contracts. Novo then inaccurately recorded the kickback payments as “commissions” in its books and records.

*Criminal Disposition:*

On the same date that it was charged, Novo entered into a three-year deferred prosecution agreement with the Department of Justice, whereby it agreed to pay a \$9 million penalty.

*Civil Disposition:*

On May 11, 2009, Novo entered into a settlement with the SEC, which enjoined it from future violations of the FCPA, and required Novo to pay \$3,025,066 in civil penalties, \$4,321,523 in disgorgement of profits, and \$1,683,556 in pre-judgment interest.

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**53. ITT Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. SEC v. ITT Corporation (D.D.C., February 11, 2009)**

*Entities and Individuals:*

- ITT Corporation, civil complaint filed February 11, 2009.
- Nanjing Gould Pumps Ltd. (complaint filed against parent company).

*Civil Charges:*

- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* China, 2001-2005.

*Summary:*

On February 11, 2009, the SEC filed a settled civil injunctive action in the U.S. District Court for the District of Columbia against ITT Corporation (ITT), a New York-based, global multi-industry company, alleging violations of the books and records and internal controls provisions of the FCPA. According to the SEC’s complaint, ITT’s violations of these provisions resulted from payments to Chinese government officials by ITT’s wholly owned Chinese subsidiary, Nanjing Goulds Pumps Ltd. (“NGP”). NGP distributes a variety of water pump products that are sold to power plants, building developers, and general contractors throughout China.

From 2001 through 2005, NGP directly through certain employees, or indirectly through third-party agents, made illicit payments to numerous Chinese state-owned entities (“SOEs”) to influence the purchase of NGP water pumps for large infrastructure projects in China, which were developed, constructed, and owned by the SOEs. NGP’s illicit payments totaled approximately \$200,000, and the customers associated with those illicit payments generated over \$4 million in sales to NGP, from which ITT realized improper profits of more than \$1 million.

In addition, NGP disguised these payments as increased commissions in NGP’s books and records. These improper NGP entries were then consolidated and included in ITT’s financial statements contained in its filings with the Commission for the company’s fiscal years 2001 through 2005.

*Civil Disposition:*

ITT, without admitting or denying the allegations in the Commission’s complaint, consented to the entry of a final judgment permanently enjoining it from future violations. The judgment also ordered

the company to pay \$1,041,112 in disgorgement and \$387,538.11 in prejudgment interest and a civil penalty in the amount of \$250,000.

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#### **54. Bribery of Thai Tourism Officials**

##### **Resulting Criminal Enforcement Action(s):**

- A. United States v. Juthamas Siriwan, et al. (C.D. Cal., January 28, 2009)**
- B. United States v. Gerald Green, et al. (C.D. Cal., January 16, 2008)**

##### **Entities and Individuals:**

- Gerald Green, Owner/Film Executive, indicted January 16, 2008; first superseding indictment filed October 1, 2008; second superseding indictment filed March 11, 2009.
- Patricia Green, Owner/Film Executive, indicted January 16, 2008; first superseding indictment filed October 1, 2008; second superseding indictment filed March 11, 2009.
- Juthamas Siriwan, Governor of the Tourism Authority of Thailand, indicted January 28, 2009.
- Jittisopa Siriwan, daughter of the Governor of the Tourism Authority of Thailand, indicted January 28, 2009.

##### **Criminal Charges:**

- Conspiracy:
  - to bribe foreign officials (Green, et al.)
  - to commit international money laundering (Green, et al.)
- Bribery of foreign officials (Green, et al.)
- Money laundering (Green, et al.)
- International money laundering (all defendants)
- False subscription of a federal tax return (Patricia Green)
- Obstruction of justice (Gerald Green)
- Aiding and abetting (Siriwan, et al.)

**Location and Time Period of Misconduct:** Thailand, 2002-2007.

##### **Summary:**

On December 18, 2007, Gerald Green and Patricia Green, the owner-operators of Film Festival Management, a Los-Angeles based company, were arrested on a criminal complaint filed on December 7, 2007, which charged them in connection with a scheme to pay bribes to tourism authorities in Thailand. The Greens were subsequently indicted by a federal grand jury in Los Angeles on January 16, 2008, on one count of conspiracy to bribe a foreign public official in violation of the FCPA and six substantive violations of the anti-bribery provisions of the FCPA. The charges against the Greens were expanded pursuant to two superseding indictments, filed on October 1, 2008 and March 11, 2009, respectively, to include charges of conspiracy to commit money laundering, money laundering, obstruction of justice, and false subscription of a U.S. income tax return.

According to court documents, the Greens paid bribes to Juthamas Siriwan, then the governor of the Tourism Authority of Thailand (TAT) in exchange for receiving contracts to manage and operate Thailand's yearly "Bangkok International Film Festival," as well as contracts related to a promotional book on Thailand and the provision of an elite tourism "privilege card" marketed to wealthy foreigners. Ultimately, between 2002 and 2007, the Greens paid approximately \$1.8 million in bribes to Juthamas Siriwan through numerous bank accounts in Singapore, the United Kingdom, and the Isle of Jersey in the name of a friend of the former governor and the former governor's daughter, Jittisopa Siriwan. The contracts received by the Greens resulted in more than \$13.5 million in revenue to businesses they owned.

For their alleged roles in this bribery scheme, Juthamas Siriwan and Jittisopa Siriwan were indicted by a federal grand jury in Los Angeles on January 28, 2009. This indictment charges the former governor and her daughter with one count of conspiracy to commit international money laundering seven counts of transporting funds to promote unlawful activity, namely felony bribery in violation of the FCPA, and one count of aiding and abetting.

*Criminal Disposition:*

On September 11, 2009, following a 2 ½ week trial, Gerald Green and Patricia Green were each found guilty of conspiracy to violate the FCPA and money laundering laws of the United States, as well as ten counts of violating the FCPA, six counts of international money laundering, one count of money laundering, and one count of forfeiture. Patricia Green was also found guilty of two counts of falsely subscribing U.S. income tax returns in connection with the scheme.

On August 12, 2010, Gerald and Patricia Green were each sentenced to 6 months' imprisonment and 3 years' supervised release – to include 6 months' home confinement – and were ordered to pay restitution of \$250,000.

Gerald and Patricia Green appealed their convictions to the U.S. Court of Appeals for the 9<sup>th</sup> Circuit in October, 2010. That appeal is currently pending. The government filed a cross-appeal to the 6 months sentence both defendants received, but subsequently withdrew that appeal on August 23, 2011. Both Greens completed their sentences of imprisonment in June 2011.

Juthamas and Jittisopa Siriwan are currently fugitives.

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**55. Fiat S.p.A.**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Iveco S.p.A. (D.D.C., December 22, 2008)**
- B. United States v. CNH Italia S.p.A. (D.D.C., December 22, 2008)**
- C. United States v. CNH France S.A. (D.D.C., December 22, 2008)**

*Resulting Civil/Administrative Enforcement Action(s):*

- D. SEC v. Fiat S.p.A., et al. (D.D.C., December 22, 2008)**

*Entities and Individuals:*

- Fiat S.p.A., deferred prosecution agreement filed December 22, 2008; civil complaint filed December 22, 2008.
- Iveco S.p.A., charged December 22, 2008.
- CNH Italia S.p.A., charged December 22, 2008.
- CNH France S.A., charged December 22, 2008.
- CNH Global N.V., civil complaint filed December 22, 2008.

*Criminal Charges:*

- Conspiracy:
  - to falsify books and records (all defendants except CNH France S.A.)
  - to commit wire fraud (all defendants)

*Civil Charges:*

- Internal controls violations (all defendants)
- Falsification of books and records (all defendants)

*Location and Time Period of Misconduct:* Iraq, 2000-2003.



Summary:

On December 22, 2008, three subsidiaries of Fiat S.p.A. (Fiat), an Italian corporation based in Turin, Italy, were charged in the U.S. District Court for the District of Columbia in connection with a scheme to pay bribes to Iraqi government officials in order to win contracts under the U.N. Oil-for-Food Program (OFFP). Two Fiat subsidiaries, Iveco S.p.A. (Iveco) and CNH Italia S.p.A. (CNH Italia), were each charged with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. A third subsidiary, CNH France S.A. (CNH France), was charged with one count of conspiracy to commit wire fraud. The SEC simultaneously filed a civil complaint against Fiat and CNH Global N.V., alleging that Fiat and its subsidiaries violated the books and records and internal controls provisions of the FCPA in relation to the same conduct.

These charges stemmed from a series of improper payments made by Fiat to Iraqi government officials in order to obtain contracts with Iraqi ministries to provide industrial pumps, gears, and other equipment. According to court documents, between 2000 and 2002, Iveco, CNH Italia, and CNH France paid a total of approximately \$4.4 million in kickbacks (referred to as “after sales service fees” (ASSFs)) to the Iraqi government by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval, and concealed from the U.N. the fact that the price contained a kickback to the Iraqi government. Iveco and CNH Italia also inaccurately recorded the kickback payments as “commissions” and “service fees” for its agents in its books and records.

Criminal Disposition:

In recognition of Fiat’s thorough review of the illicit payments and its implementation of enhanced compliance policies and procedures, and in order to resolve the criminal charges against the three Fiat subsidiaries, Fiat and the Department entered into a three-year deferred prosecution agreement that required Fiat to pay a \$7 million criminal penalty.

Civil Disposition:

Without admitting or denying the allegations in the SEC’s complaint, Fiat consented to the entry of a final judgment permanently enjoining Fiat and CNH Global from future violations of the books and records and internal controls provisions of the FCPA. In addition, as part of this judgment, Fiat was ordered to pay \$3.6 million in civil penalties and \$5,309,632 in disgorgement of profits and \$1,899,510 in prejudgment interest.

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**56. Bid-Rigging in the International Market for Marine Hose**

Resulting Criminal Enforcement Action(s):

**A. United States v. Misao Hioki (S.D. Tex., December 8, 2008)**

Entities and Individuals:

- Misao Hioki, General Manager, charged December 8, 2008.

Criminal Charges:

- Conspiracy:
  - to violate the Sherman Antitrust Act
  - to bribe foreign officials

Location and Time Period of Misconduct: Argentina, Brazil, Ecuador, Mexico, Venezuela, 2004-2007.

Summary:

On December 8, 2008, Misao Hioki, the former general manager of his company's Industrial Engineered Products Department (IEP) in Tokyo, Japan, was charged in a two-count criminal information with one count of conspiracy to violate the Sherman Antitrust Act and one count of conspiracy to violate the anti-bribery provisions of the FCPA. Hioki was charged for his role in a conspiracy to rig bids, fix prices, and allocate market shares of marine hose in the United States and elsewhere and also for his role in a conspiracy to violate the FCPA by making corrupt payments to government officials in Latin America and elsewhere in order to obtain and retain business.

General Manager of the IEP department, Hioki was responsible for supervising IEP employees in both Japan and in regional subsidiaries, including a U.S. subsidiary, who were responsible for selling the company's products in Latin America. These IEP employees and subsidiaries contracted with local sales agents in many of the Latin American countries, and these sales agents sought to develop relationships with employees of the government-owned enterprises with which the company sought to do business. These sales agents would forward information regarding potential projects to the company's regional subsidiaries, including the U.S. subsidiary, who in turn forwarded the information to IEP employees in Japan. These local sales agents often negotiated with employees of the government-owned customers in Argentina, Brazil, Ecuador, Mexico, and Venezuela to establish a percentage of the total value of the proposed deal that would be corruptly paid to these foreign officials in order to secure their business. If the company secured the deal, the company, by and through its regional subsidiaries, would pay a commission to the local sales agent, which included the illicit payment to the foreign official(s).

In furtherance of this scheme, Hioki and others knowingly approved both these deals and the making of corrupt payments and took steps to conceal the improper payments. All together, from January 2004 through 2007, Hioki and others made more than \$1 million in corrupt payments to foreign government officials in Latin America to secure or retain business for IEP.

*Criminal Disposition:*

On December 10, 2008, Hioki became the ninth individual to plead guilty in the marine hose bid-rigging investigation and the first individual to plead guilty in the investigation of the FCPA conspiracy. On the same day, Hioki was sentenced to 24 months' imprisonment and a criminal fine of \$80,000, following the Antitrust Division's established practice of negotiating agreed-to-dispositions.

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**57. AMAC International**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Shu Quan-Sheng (E.D. Va., November 12, 2008)**

*Entities and Individuals:*

- Shu Quan-Sheng, President of AMAC International, charged November 12, 2008.

*Criminal Charges:*

- Bribery of foreign officials
- Unlawful export of a defense article

*Location and Time Period of Misconduct:* China, 2003-2007.

*Summary:*

On September 24, 2008, Shu Quan-Sheng, a native of China, naturalized U.S. citizen and PhD physicist, was arrested on charges of illegally exporting space launch technical data and services to the People's Republic of China (PRC) and offering bribes to Chinese government officials. Shu, the President, Secretary and Treasurer of AMAC International, a high-tech company located in Newport News, Virginia and with an office in Beijing, China, was subsequently charged on November 12, 2008, in a three-count

information with the unlawful export of a defense article to a foreign person without prior approval in violation of the Arms Export Control Act, as well as bribery of a foreign official in violation of the FCPA.

According to court documents, from 2003 to 2007, Shu provided technical assistance and foreign technology acquisition expertise to several PRC government entities involved in the design, development, engineering, and manufacture of a space launch facility in the southern island province of Hainan, PRC. This facility was designed to house liquid-propelled heavy payload launch vehicles designed to send space stations and satellites into orbit, as well as provide support for manned space flight and future lunar missions.

Prior to the ultimate decision to award a \$4 million project to develop a 600 liter per hour liquid hydrogen tank system in January 2007, Shu allegedly offered illicit payments worth \$189,300 to officials within the PRC's 101<sup>st</sup> Research Institute, a component of the China Academy of Launch Vehicle Technology, in order to induce those officials to award the contract to a French company he represented, rather than a competitor. This liquefier was to be part of the 101 Institute's comprehensive research, development, and test base for liquid-propelled engines and space vehicle components, and at the time, the liquefier represented the first in as many as five additional projects to be undertaken by AMAC and the French company, all to be used as ground-based support for the launch vehicles at the Hainan launch facility. This successful brokering of this deal earned Shu and AMAC a commission.

As part of this project, Shu also allegedly exported controlled military technical data related to the design and manufacture of a "Standard 100 M3 Liquid Hydrogen (LH) 2 Tank" and illegally provided assistance to the foreign persons in the design, development, assembly, testing or modification of the tank and related components for the foreign launch facility. At no time during this period did Shu have the required licenses or written approvals with respect to brokering, export of defense articles, or proposals to provide defense services to the PRC.

#### Criminal Disposition:

On November 17, 2008, Shu pleaded guilty to the three count information before District Judge Henry C. Morgan, Jr. in the Eastern District of Virginia, Norfolk Division. On April 7, 2009, Shu was sentenced to 51 months' imprisonment and ordered to forfeit \$386,740.

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## **58. Nexus Technologies, Inc.**

### Resulting Criminal Enforcement Action(s):

#### **A. United States v. Nam Quoc Nguyen, et al. (E.D. Pa., September 4, 2008)**

#### Entities and Individuals:

- Nexus Technologies Inc. (Nexus), indicted September 4, 2008; superseding indictment filed October 29, 2009.
- Nam Nguyen, President of Nexus Technologies Inc., indicted September 4, 2008; superseding indictment filed October 29, 2009.
- Joseph Lukas, joint venture partner of Nexus Technologies Inc., indicted September 4, 2008.
- Kim Nguyen, Vice President of Nexus Technologies Inc., indicted September 4, 2008; superseding indictment filed October 29, 2009.
- An Nguyen, employee of Nexus Technologies Inc., indicted September 4, 2008; superseding indictment filed October 29, 2009.

#### Criminal Charges:

- Conspiracy (all defendants)
- Bribery of foreign officials (all defendants)
- Commercial bribery (all defendants except Lukas)

- Money laundering (all defendants except Lukas)

Location and Time Period of Misconduct: Vietnam, 1999-2008.

Summary:

On September 4, 2008, Nexus and its employees, Nam Quoc Nguyen, Kim Nguyen, and An Nguyen, and joint venture partner Joseph Lukas, were indicted by a grand jury in Philadelphia, Pennsylvania on charges related to a scheme to pay bribes totaling at least \$250,000 to employees of state-owned enterprises in Vietnam in exchange for favorable treatment for Nexus in the award of procurement contracts.

Nexus, a privately owned export company, identified U.S. vendors for contracts opened for bid by the Vietnamese government and other companies operating in Vietnam. The contracts allowed for the purchase of a wide variety of equipment and technology, including underwater mapping equipment, bomb containment equipment, helicopter parts, chemical detectors, satellite communication parts, and air tracking systems. Nam Nguyen negotiated the contracts and bribes with the Vietnamese government agencies and employees. Kim Nguyen, vice president of Nexus, oversaw the U.S. operations and handled company finances. Joseph Lukas and An Nguyen identified and negotiated with U.S. vendors to supply the goods needed to fulfill the contracts.

A superseding indictment of Nexus, Nam Nguyen, Kim Nguyen, and An Nguyen, which added charges, was returned by the same grand jury on October 29, 2009, charging one count of conspiracy and nine counts each of violating the FCPA, violating the Travel Act, and money laundering.

Criminal Disposition:

On June 29, 2009, Joseph Lukas pleaded guilty in relation to this conduct. On March 16, 2010, Nexus Technologies Inc., Nam Nguyen, Kim Nguyen, and An Nguyen each pleaded guilty. Nam Nguyen and An Nguyen each pled guilty to one count of conspiracy and one count of violating the FCPA, violating the Travel Act, and money laundering. Kim Nguyen pled guilty to one count of conspiracy, one count of violating the FCPA and money laundering. In pleading guilty, Nexus Technologies Inc. admitted to operating primarily through criminal means and agreed to cease all operations.

On September 15, 2010, Nam Nguyen was sentenced to 16 months' imprisonment followed by two years' supervised release. An Nguyen was simultaneously sentenced to 9 months' imprisonment followed by three years' supervised release. In recognition of their cooperation with the Government's investigation, Kim Nguyen and Joseph Lukas were sentenced to two years' probation, ordered to perform 200 hours of community service, and ordered to pay fines of \$20,000 and \$1,000, respectively. In accordance with its plea agreement, Nexus was given 1 year of organizational probation in which to completely cease operations, formally dissolve, and turn over all assets to the Court.

## **59. Con-Way Inc.**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Con-Way Inc. (D.D.C., August 27, 2008)**
- B. In the Matter of Con-Way Inc. (August 27, 2008)**

Entities and Individuals:

- Con-Way, Inc., civil complaint filed August 27, 2008; cease-and-desist order issued August 27, 2008.
- Emery Transnational (civil complaint filed against parent).

Civil Charges:

- Internal controls violations

- Falsification of books and records

*Location and Time Period of Misconduct:* Philippines, 2000-2003.

*Summary:*

On August 27, 2008, the SEC settled a civil action in the U.S. District Court for the District of Columbia charging Con-Way Inc. (Con-way), a San Mateo, California international freight transportation company, with violations of the books and records and internal controls provisions of the FCPA. The complaint alleges that between 2000 and 2003, Emery Transnational, Con-Way's Philippine subsidiary, made approximately \$244,000 in improper payments to foreign officials of the Philippines Bureau of Customs and the Philippine Economic Zone Area. The complaint alleges that these payments were made to induce these foreign officials to violate customs regulations, settle customs disputes, and reduce or not enforce otherwise legitimate fines. The complaint also alleges that the company made approximately \$173,000 in improper payments to foreign officials at fourteen state-owned airlines that conducted business in the Philippines. These payments were made to induce airline officials to improperly reserve space for Emery Transnational on airplanes, to falsely under-weigh shipments, and to improperly consolidate multiple shipments into a single shipment, resulting in lower shipping charges. According to the complaint, none of the improper payments were accurately reflected in Con-way's books and records, and Con-way knowingly failed to implement a system of internal accounting controls concerning Emery Transnational that would both ensure that Emery Transnational complied with the FCPA and require that the payments it made to foreign officials would be accurately reflected on its books and records.

*Civil Disposition:*

In a settlement agreement with the SEC, Con-Way agreed to cease-and-desist from future violations of the FCPA and to pay \$300,000 in civil penalties.

## **60. AGA Medical Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. AGA Medical Corporation (D. Minn., June 3, 2008)**

*Entities and Individuals:*

- AGA Medical Corporation, charged June 3, 2008.

*Criminal Charges:*

- Conspiracy to bribe foreign officials
- Bribery of foreign officials

*Location and Time Period of Misconduct:* China, 1997-2005.

*Summary:*

On June 3, 2008, AGA Medical Corporation (AGA), a privately-held medical device manufacturer, incorporated and headquartered in Minnesota, was charged in a two-count criminal information with one count of conspiring to make bribe payments to Chinese officials and one count of violating the FCPA in connection with the authorization of specific corrupt payments to officials in the People's Republic of China (PRC).

According to the criminal information, between 1997 and 2005, AGA, a high-ranking officer of AGA and other AGA employees agreed to make corrupt payments to doctors in China who were employed

by government-owned hospitals and caused those payments to be made through AGA's local Chinese distributor. In exchange for these payments, the Chinese doctors directed the government-owned hospitals to purchase AGA's products rather than those of the company's competitors.

The criminal information also alleges that from 2000 through 2002, AGA sought patents on several AGA products from the PRC State Intellectual Property Office. As a part of this effort, AGA and a high-ranking officer of AGA agreed to make payments through their local Chinese distributor to Chinese government officials employed by the State Intellectual Property Office in order to have the patents approved.

*Criminal Disposition:*

On June 3, 2008, AGA entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, AGA agreed to pay a \$2 million criminal fine and to engage an independent compliance monitor.

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**61. Willbros Group Inc.**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Willbros Group Inc., et al. (S.D. Tex., May 14, 2008)**
- B. United States v. James K. Tillery, et al. (S.D. Tex., January 17, 2008)**
- C. United States v. Jason Edward Steph (S.D. Tex., July 19, 2007)**
- D. United States v. Jim Bob Brown (S.D. Tex., September 11, 2006)**

*Resulting Civil/Administrative Enforcement Action(s):*

- E. SEC v. Willbros Group Inc., et al. (S.D. Tex., May 14, 2008)**
- F. SEC v. Jim Bob Brown (S.D. Tex., September 14, 2006)**

*Entities and Individuals:*

- Willbros Group, Inc. (WGI), charged May 14, 2008; civil complaint filed May 14, 2008.
- Willbros International, Inc. (WII), charged May 14, 2008.
- Jim Bob Brown, WII's Managing Director (Nigeria), charged September 11, 2006; civil complaint filed September 14, 2006.
- Jason Edward Steph, WII's General Manager-Onshore in Nigeria, indicted July 19, 2007; civil complaint filed May 14, 2008.
- James K. Tillery, Executive Vice President and President of WII, indicted January 17, 2008.
- Paul G. Novak, Consultant and Intermediary, indicted January 17, 2008.
- Gerald Jansen, WII's Administrator and General Manager-Finance, civil complaint filed May 14, 2008.
- Lloyd Biggers, WII Employee, civil complaint filed May 14, 2008.
- Carlos Galvez, WII Accounting and Administrative Employee, civil complaint filed May 14, 2008.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to falsify books and records (WGI and WII)
  - to commit money laundering (Tillery, Novak, and Steph)
- Bribery of foreign officials (Tillery and Novak)
- International Money Laundering (Steph)

*Civil Charges:*

- Bribery of foreign officials (Willbros and Steph)
- Fraud in connection with the purchase and sale of securities (Willbros)
- Aiding and abetting Willbros' fraud violations (Galvez)
- Disclosure violations (Willbros)
- Aiding and Abetting Willbros' disclosure violations (Galvez)
- Internal controls violations (Willbros)
- Falsification of books and records (Willbros)
- False accounting violations (Steph, Jansen, Galvez, Biggers)
- Aiding and abetting Willbros' bribery of foreign officials (Steph, Jansen, Biggers)
- Aiding and abetting Willbros' internal controls violations (Steph, Jansen, Galvez, Biggers)
- Aiding and abetting Willbros' falsification of books and records (Steph, Jansen, Galvez, Biggers)

Location and Time Period of Misconduct: Nigeria, 2003-2005; Ecuador, 2004.

Summary:

On May 14, 2008, Willbros Group Inc. (WGI), a publicly-traded company that provides construction, engineering and other services in the oil and gas industry, and Willbros International Inc. (WII), the wholly owned subsidiary through which it conducts international operations, were charged in a six-count criminal information with one count of conspiring to make bribe payments to Nigerian and Ecuadorian officials, two counts of violating the anti-bribery provisions of the FCPA, and three counts of violating the books and records provisions of the FCPA. These charges stemmed from a bribery scheme involving senior officials of WII, which involved the corrupt payment of more than \$6.3 million to Nigerian officials in connection with a gas pipeline construction project and \$300,000 to Ecuadorian officials in connection with a gas pipeline rehabilitation project.

From late 2003 through March 2005, WII employees agreed to make corrupt payments totaling more than \$6.3 million to officials of the Nigerian National Petroleum Corporation (NNPC), the state-owned oil company in Nigeria; NNPC's subsidiary, the National Petroleum Investment Management Services (NAPIMS); a senior official in the executive branch of the Nigerian federal government; officials of a multinational oil company; and a Nigerian political party. These bribes were paid to Nigerian government officials to assist in obtaining and retaining a \$387 million contract for work on a major engineering, procurement and construction gas pipeline project known as the Eastern Gas Gathering System (EGGS). In addition, in 2004, various WII employees paid at least \$300,000 to officials of the Ecuadorian state-owned oil company in order to obtain a gas pipeline rehabilitation contract.

Three former WII employees and one WII agent have been charged criminally for their participation in this bribery scheme:

- 1) Jim Bob Brown, WII's Managing Director (Nigeria and Ecuador), was charged September 11, 2006. Brown was charged in connection with conspiring with other WII executives to pay approximately \$1.5 million in cash to Nigerian officials and \$300,000 to Ecuadorian officials. According to court documents, from 1996 through 2005, Brown also conspired with other WII executives to approve a scheme in which WII's Nigerian operations submitted fictitious invoices for payment by WGI. These funds were used, in part, to make corrupt payments to officials of the Nigerian revenue agencies and courts in order to lower taxes that would have otherwise been assessed, and to influence favorably litigation in Nigeria affecting the business of WGI.
- 2) Jason Edward Steph, WII's General Manager-Onshore in Nigeria, was indicted July 19, 2007. Steph's charges stemmed from his role in causing a series of corrupt payments totaling more than \$6 million to be made to various Nigerian officials in order to assist WII in obtaining and retaining the EGGS deal. According to court documents, in early 2005, as a senior WII executive, Steph

authorized and arranged for the payment of \$1.8 million in cash to the Nigerian officials to further the conspiracy.

- 3) James K. Tillery, Executive Vice President and President of WII, was indicted January 17, 2008. Tillery was charged in connection with the payment of more than \$6 million in bribes to Nigerian and Ecuadorian government officials. Tillery was charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA, two counts of violating the anti-bribery provisions of the FCPA, and one count of conspiracy to launder money.
- 4) Paul G. Novak, Consultant and Intermediary, was indicted January 17, 2008. Novak was charged for his role as an intermediary in the payment of more than \$6 million in bribes to Nigerian and Ecuadorian government officials. Novak was charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA, two counts of violating the anti-bribery provisions of the FCPA, and one count of conspiracy to launder money.

In a related matter, on May 14, 2008, the SEC filed a civil complaint against WGI and Steph, as well as three other former WII employees: (1) Gerald Jansen, WII's Administrator and General Manager-Finance; (2) Lloyd Biggers, WII employee; (3) Carlos Galvez, WII accounting and administrative employee. Previously, on September 14, 2006, the SEC filed a settled civil complaint against Jim Bob Brown in the Southern District of Texas. The civil charges brought by the SEC stem from the same general conduct underlying the criminal charges.

*Criminal Disposition:*

On May 14, 2008, WGI (and WII) entered into a deferred prosecution agreement with the Department of Justice. As part of the agreement, WGI agreed to pay a fine of \$22 million.

Jason Edward Steph pleaded guilty on November 5, 2007 and was sentenced on January 28, 2010 to 15 months' incarceration, 2 years' supervised release, and a fine of \$2,000. Steph's sentence reflected a reduction in its severity because of his cooperation with the government.

On January 28, 2010, Jim Bob Brown was sentenced to 12 months and 1 day's incarceration, 2 years' supervised release, and a fine of \$17,500 in connection with his September 2006 guilty plea. Brown's sentence also reflected a reduction in its severity due to his cooperation with the government.

On November 12, 2009, Paul G. Novak pleaded guilty to participating in a conspiracy to violate the FCPA. Novak had been a fugitive, but he returned to the United States from Constantia, South Africa, after his U.S. passport was revoked. He is currently awaiting sentencing.

James K. Tillery is a fugitive and remains at large.

*Civil Disposition:*

To settle the civil charges filed by the SEC, WGI agreed to disgorge \$8.9 million in profits and \$1.4 million in prejudgment interest.

In order to settle the related civil complaints by the SEC, Jansen, Biggers, Galvez each consented to judgments that permanently enjoin them from future violations of the FCPA. In addition, Jansen and Galvez were subject to civil penalties in the amount of \$30,000 and \$35,000, respectively.

In order to settle the civil charges brought by the SEC, Steph and Brown also consented to the entry of judgments, which permanently enjoin them from future violations of the FCPA. Pursuant to these judgments, the Court will determine later whether Steph and/or Brown will pay a civil penalty and what the amount of such penalty will be.

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**62. Pacific Consolidated Industries LP**

*Resulting Criminal Enforcement Action(s):*



- A. United States v. Martin Eric Self (C.D. Cal., May 2, 2008)**  
**B. United States v. Leo Winston Smith (C.D. Cal., April 25, 2007)**

*Entities and Individuals:*

- Pacific Consolidated Industries LP (PCI) (company had ceased to exist).
- Martin Eric Self, President and Owner, charged May 2, 2008.
- Leo Winston Smith, Executive VP & Director of Sales and Marketing, indicted April 25, 2007.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (Smith)
  - to commit money laundering (Smith)
- Bribery of foreign officials (both defendants)
- International money laundering (Smith)
- False statement in a tax return (Smith)

*Location and Time Period of Misconduct:* United Kingdom, 1993-2003.

*Summary:*

On May 2, 2008, Martin Eric Self, a former Pacific Consolidated Industries (PCI) executive was charged in a two-count information with violating the FCPA in connection with the illicit payment of more than \$70,000 in bribes for the benefit of a U.K. Ministry of Defense (UK-MOD) official in exchange for obtaining and retaining lucrative contracts with the U.K. Royal Air Force for PCI. Previously, on April 25, 2007, another former PCI executive, Leo Winston Smith, was indicted by a federal grand jury in Santa Ana, California, on several counts of FCPA violations and money laundering in connection with his participation in a scheme to make over \$300,000 in illicit payments to the same foreign official from 1993-2003. Smith was also charged with failing to report nearly \$500,000 in commissions from PCI on his 2003 U.S. tax return.

PCI was a private company headquartered in Santa Ana that manufactured Air Separation Units (ASUs) and other equipment for defense departments throughout the world. ASUs generate oxygen in remote, extreme, and confined locations for aircraft support and military hospitals. Self, a U.S. citizen, was a partial owner and the president of PCI at the time the crimes were committed. As president, Self was a signatory on PCI marketing agreements and bank accounts.

In or about October 1999, Self and Smith, PCI's then-executive vice president and director of sales and marketing, caused PCI to enter into a marketing agreement with a person they understood to be a relative of the UK-MOD official. The UK-MOD official was a project manager who was directly involved in the procurement of ASUs on behalf of the UK-MOD and, as a result of his position, was able to influence the awarding of the ASU contracts to PCI. The ASU and related contracts that were awarded to PCI were valued at over \$11 million.

According to court documents, the defendants were not aware of any genuine services provided by the official's relative, and they believed that there was a high probability that the payments were being made to the official's relative in order to benefit the official in exchange for PCI obtaining and retaining the ASU contracts. Despite these beliefs, Self initiated several of the improper wire transfers to the relative and deliberately avoided learning the true facts relating to the nature and purpose of the payments.

*Criminal Disposition:*

On November 17, 2008, Self was sentenced to two years' probation and a fine of \$20,000 in connection with his May 2008 guilty plea. Smith pleaded guilty on September 3, 2009. On December 2, 2010, Smith was sentenced to 6 months' imprisonment followed by 6 months' home confinement and 3 years' supervised release. Smith was also ordered to pay a fine of \$7,500. The UK-MOD official pleaded

guilty in the U.K. to accepting more than \$300,000 in bribes from PCI and was sentenced to two years in prison.

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**63. AB Volvo**

**Resulting Criminal Enforcement Action(s):**

- A. United States v. Volvo Construction Equipment, AB (D.D.C., March 20, 2008)**
- B. United States v. Renault Trucks SAS (D.D.C., March 20, 2008)**

**Resulting Civil/Administrative Enforcement Action(s):**

- C. SEC v. AB Volvo (D.D.C., March 20, 2008)**

**Entities and Individuals:**

- AB Volvo, deferred prosecution agreement announced March 20, 2008.
- Volvo Construction Equipment AB, charged March 20, 2008.
- Renault Trucks SAS, charged March 20, 2008.

**Criminal Charges:**

- Conspiracy:
  - to falsify books and records (all defendants)
  - to commit wire fraud (all defendants)

**Civil Charges:**

- Internal controls violations
- Falsification of books and records

**Location and Time Period of Misconduct:** Iraq, 2000-2003.

**Summary:**

On March 20, 2008, AB Volvo, a Swedish company, entered into a deferred prosecution agreement with the Department of Justice and a settlement agreement with the SEC in connection with payments made by two of its subsidiaries to obtain contracts administered by the United Nations Oil for Food Program (OFFP). The subsidiaries, Renault Trucks SAS (Renault Trucks) and Volvo Construction Equipment AB (VCE), were charged in separate conspiracies to commit wire fraud and violate the books and records provision of the FCPA.

According to the court documents, between November 2000 and April 2003, employees and agents of Renault Trucks paid a total of approximately \$5 million in kickbacks to the Iraqi government for a total of approximately €61 million worth of contracts with various Iraqi ministries. To pay the kickbacks, Renault Trucks inflated the price of contracts by approximately 10 percent before submitting them to the U.N. for approval and concealed from the U.N. the fact that the contract prices contained a kickback to the Iraqi government. In some cases, Renault Trucks paid inflated prices to companies that outfitted the chassis and cabs produced by Renault Trucks. Those companies then used the excess funds to pay the kickbacks to the Iraqi government on behalf of Renault Trucks.

Between December 2000 and January 2003, Volvo Construction Equipment International AB (VCEI), the predecessor to VCE, and its distributors were awarded a total of approximately \$13.8 million worth of contracts. During the same time period, employees, agents and distributors of VCEI paid a total of approximately \$1.3 million in kickbacks to the Iraqi government by inflating the price of contracts by approximately 10 percent before submitting them to the U.N. for approval. Similar to Renault Trucks, VCEI concealed from the U.N. the fact that the contract prices contained a kickback to the Iraqi government.

*Criminal Disposition:*

To resolve its criminal liability in connection with this bribery scheme, AB Volvo, on behalf of itself and its subsidiaries, entered into a three-year deferred prosecution agreement with the Department, whereby AB Volvo agreed to pay a criminal fine of \$7 million.

*Civil Disposition:*

In a settlement with the SEC, AB Volvo agreed to a permanent injunction from future violations and to pay \$7,299,208 in disgorgement of profits and \$1,303,441 in prejudgment interest, as well as civil penalties in the amount of \$4 million.

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**64. Flowserve Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Flowserve Pompes SAS (D.D.C., February 21, 2008)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Flowserve Corporation (D.D.C., February 21, 2008)**

*Entities and Individuals:*

- Flowserve Corporation, civil complaint filed February 21, 2008.
- Flowserve Pompes SAS, charged February 21, 2008.

*Criminal Charges:*

- Conspiracy:
  - to falsify books and records
  - to commit wire fraud

*Civil Charges:*

- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Iraq, 2001-2003.

*Summary:*

On February 21, 2008, the Department of Justice and the SEC simultaneously filed a criminal information and a civil complaint against Flowserve Pompes SAS (Flowserve Pompes), and its parent company, Flowserve Corporation (Flowserve), in the U.S. District Court for the District of Columbia. The information charges that Flowserve Pompes engaged in a conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA in connection with a scheme to pay kickbacks to the Iraqi government under the United Nations Oil for Food Program (OFFP). The SEC's civil complaint charges Flowserve with violating the books and records and internal controls provisions of the FCPA in connection with the same underlying conduct.

According to documents filed in the criminal and civil cases, the French and Dutch subsidiaries of Flowserve, a Texas-based manufacturer of pumps, valves, seals, and related automation services for the oil and gas, chemical, and power industries, paid or promised to pay approximately \$820,246 from 2001 to 2003 in connection with the sale of industrial equipment to the Iraqi government. Flowserve Pompes, Flowserve's French subsidiary, concealed illegal payments to the Iraqi government totaling \$604,651 through a Jordanian entity that was its exclusive agent for Iraqi contracts. These payments were made to assist Flowserve Pompes in obtaining fifteen contracts for the sale of large-scale water pumps and spare parts for use in Iraqi oil refineries. Flowserve Pompes also agreed to, but did not ultimately make, an

additional \$173,758 in improper payments pursuant to four additional contracts, as delivery under these four contracts had not been completed by the time of the U.S. invasion of Iraq in March 2003. Senior officials at Flowserve Pompes, including its President, allegedly developed different false cover stories to conceal these kickback payments in the company's internal accounting records.

According to the SEC's complaint, Flowserve's Dutch Subsidiary, Flowserve B.V., also entered into one contract involving an improper kickback under the OFFP. Specifically, Flowserve B.V. paid \$41,836 in kickbacks to Iraqi officials in order to obtain a contract to supply water pump spare parts to the Iraqi government-owned South Gas Company.

*Criminal Disposition:*

Flowserve entered into a three-year deferred prosecution agreement with the Department and paid a \$4 million fine. Flowserve also entered into a non-prosecution agreement with the Dutch prosecutor, which included a \$376,000 fine.

*Civil Disposition:*

To settle the pending civil charges brought by the SEC, Flowserve agreed to pay a \$3 million civil penalty and approximately \$2,270,861 in disgorgement and \$853,364 in prejudgment interest. Flowserve also agreed to an order enjoining it from future violations of the FCPA.

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**65. Westinghouse Air Brake Technologies Corporation ("Wabtec")**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Westinghouse Air Brake Technologies Corporation (February 14, 2008)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Westinghouse Air Brake Technologies Corporation (E.D. Pa., February 14, 2008)**

**C. In the Matter of Westinghouse Air Brake Technologies Corporation (February 14, 2008)**

*Entities and Individuals:*

- Westinghouse Air Brake Technologies Corporation, non-prosecution agreement announced, civil complaint filed, and cease-and-desist order issued February 14, 2008.

*Criminal Charges:*

- Bribery of foreign officials
- Falsification of books and records

*Civil Charges:*

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* India, 2001-2005.

*Summary:*

On February 14, 2008, Westinghouse Air Brake Technologies Corporation (Wabtec), a Pennsylvania-based and New York Stock Exchange-listed manufacturer of brake subsystems and related products for locomotives, freight cars, and passenger vehicles, entered into a non-prosecution agreement with the Department of Justice regarding improper payments made by its Indian subsidiary, Pioneer Friction Limited (Pioneer), to officials of the Indian Railway Board (IRB). On the same date, the SEC

filed a settled civil enforcement proceedings charging Wabtec with violations of the anti-bribery, internal controls, and books and records provisions of the FCPA.

According to court documents, from at least 2001 through 2005, Pioneer made over \$137,400 in improper cash payments to officials of the Indian Railway Board, a government agency which is part of India's Ministry of Railroads. These payments were made in order to: (a) assist Pioneer in obtaining and retaining business with the IRB; (b) schedule pre-shipping product inspections; (c) obtain issuance of product delivery certificates; and, (d) curb what Pioneer considered to be excessive tax audits.

*Criminal Disposition:*

In recognition of its voluntary disclosure, thorough internal investigation, full cooperation, and institution of remedial compliance measures, the Department agreed not to prosecute Wabtec or Pioneer for the making or false recording of these improper payments, provided that Wabtec satisfied its obligations under the agreement for a period of three years. Those obligations included continued cooperation, the adoption of rigorous internal controls, and the payment of a \$300,000 criminal penalty.

*Civil Disposition:*

The SEC filed two settled actions against Wabtec, which required the company to cease-and-desist from future violations, to retain an independent FCPA compliance monitor, to pay a civil penalty of \$87,000, and to disgorge \$259,000, together with \$29,351 in prejudgment interest.

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**66. Lucent Technologies Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Lucent Technologies Inc. (December 21, 2007)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Lucent Technologies Inc. (D.D.C., December 21, 2007)**

*Entities and Individuals:*

- Lucent Technologies Inc., non-prosecution agreement announced and civil complaint filed December 21, 2007.

*Criminal Charges:*

- Bribery of foreign officials
- Falsification of books and records

*Civil Charges:*

- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* China, 2000-2003.

*Summary:*

On December 21, 2007, the Department of Justice and the SEC settled a multi-year investigation into whether global communications provider Lucent Technologies Inc. (Lucent) provided travel and other things of value to Chinese government officials. As part of the settlement, Lucent acknowledged that, from at least 2000 to 2003, it spent millions of dollars on approximately 315 "pre-sale" and "post-sale" trips for Chinese government officials that included primarily sightseeing, entertainment and leisure. These

trips were requested and approved with the consent and knowledge of the most senior Lucent Chinese officials and with the logistical and administrative assistance of Lucent employees in the United States, including at corporate headquarters in Murray Hill, N.J. Lucent also admitted that it improperly recorded expenses for these trips in its books and records and failed to provide adequate internal controls to monitor the provision of travel and other things of value to Chinese government officials.

Lucent acknowledged that it provided Chinese government officials with pre-sale trips to the United States to attend seminars and visit Lucent facilities, as well as to engage in sightseeing, entertainment and leisure activities. In 2002 and 2003 alone, there were 24 Lucent-sponsored pre-sale trips for Chinese government customers. Of these, at least 12 trips were mostly for the purpose of sightseeing. Lucent spent over \$1.3 million on at least 65 pre-sale visits between 2000 and 2003. The individuals participating in these trips were senior level government officials, including the heads of state-owned telecommunications companies in Beijing and the leaders of provincial telecommunications subsidiaries.

Between 2000 and 2003, Lucent also provided Chinese government officials with post-sale trips that were typically characterized as “factory inspections” or “training” in contracts with its Chinese government customers. By 2001, however, Lucent had outsourced most of its manufacturing and no longer had any Lucent factories for its customers to tour. Nevertheless, Lucent provided individuals with trips for “factory inspections” to the United States, Europe, Australia, Canada, Japan and other countries that involved little or no business content. These trips consisted primarily or entirely of sightseeing to locations such as Disneyland, Universal Studios, the Grand Canyon, and in cities such as Los Angeles, San Francisco, Las Vegas, Washington, D.C., and New York City, and typically lasted 14 days each and cost between \$25,000 and \$55,000 per trip.

*Criminal Disposition:*

To resolve its potential criminal liability in connection with this improper conduct, Lucent entered into a two-year non-prosecution agreement with the Department and agreed to pay a \$1 million criminal fine. Under the terms of this agreement, Lucent was required to adopt new or modify existing internal controls, policies and procedures. Those enhanced compliance controls must ensure that Lucent makes and keeps fair and accurate books, records and accounts, as well as a rigorous anti-corruption compliance code, standards and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws.

*Civil Disposition:*

In a settlement with the SEC, Lucent agreed to be enjoined from future violations and to pay \$1.5 in civil penalties.

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**67. Akzo Nobel, N.V.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Akzo Nobel N.V. (December 20, 2007)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Akzo Nobel N.V. (D.D.C., December 20, 2007)**

*Entities and Individuals:*

- Akzo Nobel N.V., non-prosecution agreement announced and civil complaint filed December 20, 2007.

*Criminal Charges:*

- Bribery of foreign officials

- Falsification of books and records

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

On December 20, 2007, the Department of Justice and the SEC settled allegations against Akzo Nobel N.V. (Akzo), for its participation in a kickback scheme surrounding the United Nations Oil for Food Program (OFFP). Akzo Nobel, a Dutch pharmaceutical company with its headquarters in Arnhem, Netherlands, acknowledged responsibility for the actions of two of its subsidiaries whose employees and agents made nearly \$280,000 in kickback payments to the Iraqi government from 2000-2003, which were characterized as “after-sales service fees” (ASSFs).

In 2000, Akzo subsidiary Intervet International B.V. (Intervet) entered into one OFFP contract involving a kickback payment of \$38,741. During the OFFP, Intervet conducted business in Iraq through two separate agents, who were paid jointly on all Iraqi contracts. In August 2000, the agents’ fees were 2.5 percent each. In September 2000, one of the agents informed Intervet that the Iraqi ministry required that Intervet make a five percent kickback under an OFFP contract under negotiation. Although Intervet initially refused to make the payment, at the contract signing, an Intervet employee who was aware of the kickback demand saw the agent deliver an envelope to one of the Iraqi representatives. Shortly thereafter, the agent sought reimbursement of the five percent kickback made on the contract. In order to reimburse the agent for the kickback while not accurately reflecting the true purpose of the payment in the company’s books and records, the Intervet employees agreed to revert to Intervet’s pre-August 2000 commission arrangement with its two agents, giving each agent a five percent commission. By doing so, the agents could keep the 2.5 percent they were each entitled to receive and the agent who paid the kickback could be reimbursed for the five percent passed on to the Iraqi ministry.

During this period, another Akzo subsidiary, N.V. Organon (Organon), entered into three contracts that involved the payment of \$240,750 in ASSF payments to Iraqi officials. The same agent that worked on the Intervet transaction was involved in each of these transactions. On the first contract, Organon and the Iraqi ministry agreed on an initial contract price. However, when Organon prepared the contract documents that were approved by the U.N., Organon inflated the contract price by ten percent to cover the ASSF payment. On the two subsequent contracts, Organon simply agreed with the Iraqi ministry on an initial contract price that was inflated by ten percent, and then submitted that inflated contract price in the U.N. documents. An Organon employee created backdated price quotes that matched the pricing reflected in the three contracts. The agent’s commission was increased from five percent to fifteen percent to account for the ten percent kickback. On the first contract, the agent requested that Organon pay the extra ten percent commission to an entity called “Sabbagh Drugstore.” On the remaining two contracts, the agent requested that Organon pay the extra ten percent commissions directly to an account in his name. The Organon employees were aware that the contract price submitted to the U.N. was inflated by ten percent and that the increase in the agent’s commission resulted in money going directly to Kimadia, a unit of the Iraqi Ministry of Health.

Criminal Disposition:

With regard to its criminal conduct, Akzo entered into a non-prosecution agreement with the Department, which required the company to cooperate fully with the ongoing investigation. In addition, the agreement stipulated that if Organon reached a resolution with the Dutch National Public Prosecutor’s Office for Financial, Economic and Environmental Offences regarding its conduct, including payment of a criminal fine of approximately €381,000 in the Netherlands, then it would pay no fine in the U.S. If no



agreement was reached with Dutch authorities in that time, Akzo would have to pay a criminal fine of \$800,000 in the United States.

Civil Disposition:

The SEC settlement enjoined Akzo from future violations and required the corporation to disgorge \$1,647,363 in profits and \$584,150 in prejudgment interest and pay a \$750,000 civil penalty.

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**68. Schnitzer Steel Industries, Inc.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Si Chan Wooh (D. Or., June 26, 2007)**
- B. United States v. SSI International Far East Ltd. (D. Or., October 10, 2006)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Robert W. Philip (D. Or., December 13, 2007)**
- D. SEC v. Si Chan Wooh (D. Or., June 29, 2007)**
- E. In the Matter of Schnitzer Steel Industries, Inc. (October 16, 2006)**

Entities and Individuals:

- Schnitzer Steel Industries, Inc. (SSI), deferred prosecution agreement announced and cease-and-desist order issued October 16, 2006.
- SSI International Far East Ltd. (SSI Korea), charged October 10, 2006.
- Si Chan Wooh, Senior Officer of SSI Korea, charged June 26, 2007; civil complaint filed June 29, 2007.
- Robert W. Philip, President, CEO and Chairman of the Board of SSI, civil complaint filed December 13, 2007.

Criminal Charges:

- Conspiracy
  - to bribe foreign officials (SSI Korea and Wooh)
  - to falsify books and records (SSI Korea)
  - to commit wire fraud (SSI Korea)
- Bribery of foreign officials(SSI Korea)
- Falsification of books and records (SSI Korea)
- Wire fraud (SSI Korea)
- Aiding and abetting SSI's falsification of books and records (SSI Korea)

Civil Charges:

- Bribery of foreign officials (SSI, Philip, Wooh)
- Internal controls violations (SSI)
- Falsification of books and records (SSI)
- Aiding and abetting SSI's bribery of foreign officials (Philip, Wooh)
- Aiding and abetting SSI's internal controls violations (Philip, Wooh)
- Aiding and abetting SSI's falsification of books and records (Philip, Wooh)

Summary:

On October 10, 2006, SSI International Far East Ltd. (SSI Korea), a wholly-owned subsidiary of Schnitzer Steel Industries Inc. (SSI), was charged with conspiracy, bribery in violation of the FCPA, wire

fraud, and aiding and abetting the making of false entries in SSI's books and records. These charges stemmed from a decade-long scheme to bribe foreign officials in China and South Korea in order to obtain and retain business for SSI Korea and its Oregon-based parent company. In June 2007, Si Chan Wooh, a former senior executive officer of SSI, was charged by both the DOJ and SEC in connection with his role in the bribery scheme.

According to court documents, from at least 1995 to at least August 2004, SSI, through its officers and employees, including Wooh, authorized and made corrupt payments worth more than \$1.8 million to officers and employees of government owned customers in China and South Korea to induce them to purchase scrap metal from SSI. Between September 1999 and August 2004, corrupt payments of approximately \$204,537 were paid to managers of government-owned customers in China. As a result of these corrupt payments, during that same time period, SSI realized gross revenue of approximately \$96,396,740 and profits of approximately \$6,259,104 on scrap metal sold to instrumentalities in China.

In a related action, on December 13, 2007, the SEC filed a settled civil complaint charging former Chairman and CEO of SSI, Robert W. Philip, with violating the anti-bribery provisions of the FCPA and with aiding and abetting SSI's anti-bribery, books and records, and internal controls violations. According to the SEC's complaint, from 1999 to 2004, Philip authorized the payment of more than \$200,000 to managers of government-owned steel mills in China in order to induce them to purchase scrap metal from SSI. In addition, the complaint charged Philip with authorizing more than \$1.7 million in payments to managers of privately-owned steel mills in both China and South Korea. SSI later described these payments as "sales commissions," "commissions to the customer," "refunds," or "rebates" in its books and records, in violation of the FCPA.

*Criminal Disposition:*

SSI Korea pleaded guilty on October 16, 2006, and was sentenced to pay a criminal fine of \$7.5 million. In addition, SSI entered into a three-year deferred prosecution agreement with the Department and agreed to appoint an independent compliance monitor.

On June 29, 2007, Wooh pleaded guilty to one count of conspiring to violate the FCPA's anti-bribery provisions before U.S. District Judge Garr M. King in the District of Oregon. On October 17, 2011, the United States filed an Unopposed Motion to Dismiss the Information pending against Wooh.

*Civil Disposition:*

On October 16, 2006, the SEC filed a settled action against SSI, requiring it to cease-and-desist from future violations, disgorge \$7,725,201 in ill-gotten profits and \$1,446,106 in pre-judgment interest, and retain and independent FCPA compliance monitor for a period of three years.

Philip agreed to pay a total of \$250,000 to settle the SEC's charges, including \$169,863.79 in disgorgement of bonuses and pay, \$16,536.63 in prejudgment interest, and a \$75,000 civil penalty.

On June 29, 2007, the SEC filed a settled action against Wooh enjoining him from future violations and ordering that he disgorge \$14,819.38 in bonuses and \$1,312.52 in prejudgment interest and pay a \$25,000 civil penalty.

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**69. Vitol SA**

*Resulting Criminal Enforcement Action(s):*

**A. New York v. Vitol SA (New York County, November 20, 2007)**

*Entities and Individuals:*

- Vitol SA, charged November 20, 2007, in New York State Court.

*Criminal Charges:*

- Grand Larceny

Location and Time Period of Misconduct: Iraq, 2001-2002.

Summary:

In 2007, the Manhattan (NY) District Attorney's Office charged Vitol, S.A. (Vitol), a Swiss oil trading firm, with Grand Larceny in the First Degree for its involvement in a scheme to pay kickbacks to Iraq in connection with oil purchases made under the United Nations Oil-for-Food Program (OFFP). According to court documents, while the OFFP was in effect, Vitol purchased Iraqi crude oil first as direct purchaser and later from third-parties. In June 2001, after an OPEC meeting, an agent of VITOL was told by Iraqi officials that surcharges had to be paid in order for Iraqi crude oil to be lifted. Over the next year, VITOL paid or caused surcharges to be paid on certain oil purchases in two ways. In direct purchases, VITOL had an associated entity called Vitol Bahrain send the surcharge monies to accounts controlled by the Iraqi regime. In indirect purchases, VITOL financed the purchase of oil through third-parties who then paid the surcharge to the Iraqi regime. VITOL did not inform the UN about the surcharge payments. During the period from June 2001 through September 2002, approximately \$13,000,000 in surcharge monies were paid directly to the Iraqi regime in connection with crude oil purchased directly or indirectly by VITOL.

Criminal Disposition:

On November 20, 2007, Vitol pleaded guilty and was sentenced to pay restitution of \$13 million to the Iraqi people through the Development Fund for Iraq, in addition to a payment of \$4.5 million in lieu of fines, forfeiture and to cover the costs of prosecution.

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**70. Chevron Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Chevron Corporation (S.D.N.Y., November 14, 2007)**
- B. New York v. Chevron Corporation (New York County, November 14, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Chevron Corporation (S.D.N.Y., November 14, 2007)**

Entities and Individuals:

- Chevron Corporation, charged and civil complaint filed November 14, 2007.

Criminal Charges:

- Wire fraud

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2001-2003.

Summary:

On November 2007, Chevron Corporation (Chevron) was charged by the U.S. Attorney's Office for the Southern District of New York (SDNY), the New York County District Attorney's Office (DANY), and the SEC in connection with a scheme to pay secret, illegal surcharges to the Iraqi government in order to obtain Iraqi oil under the former United Nations Oil-for-Food Program (OFFP). From in or about 2000,

up to and including in or about March 2003, the former Iraqi government demanded the payment of secret illegal surcharges on allocations of Iraqi oil. In 2001, oil market participants, including participants who purported to have close ties to officials of the Government of Iraq, informed representatives of Chevron that surcharges were being demanded on Iraqi oil allocations in the OFFP. Subsequently, from 2001 through 2003, in order to purchase Iraqi oil, Chevron paid approximately \$20 million in illegal surcharges to the former Government of Iraq, in violation of United States wire fraud statutes and administrative regulations that prohibited transactions with the former Government of Iraq.

**Criminal Disposition:**

In a joint settlement with the SEC, SDNY, DANY and the Office of Foreign Asset Control of the Department of Treasury (OFAC), Chevron agreed to pay combined monetary penalties in the amount of \$27 million. Pursuant to the agreement, Chevron's payments were to be split along the following lines: (1) forfeiture of \$20,000,000 to SDNY, which would seek to transfer that money to the Development Fund of Iraq; and, (2) \$5,000,000 to the DANY to be distributed as DANY shall deem appropriate.

In addition to the monetary payments, the joint Agreement obligated Chevron to continue cooperating fully with SDNY, DANY, the FBI, the SEC, OFAC, and any other law enforcement agency designated by SDNY or DANY. In exchange, DOJ agreed not to prosecute Chevron for any crimes related to its purchase of Iraqi oil during the OFFP.

**Civil Disposition:**

On November 14, 2007, the SEC filed a settled action against Chevron enjoining it from future violations and ordering it to pay \$25 million in disgorgement and \$3 million in civil penalties. Pursuant to the joint settlement agreement, the disgorgement required was to be satisfied by the payments to SDNY and DANY detailed above. The remaining \$2 million from the \$27 million joint penalty were paid by Chevron to OFAC.

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**71. Ingersoll-Rand Company Limited**

**Resulting Criminal Enforcement Action(s):**

- A. United States v. Ingersoll-Rand Italiana SpA (D.D.C., October 31, 2007)**
- B. United States v. Thermo-King Ireland Limited (D.D.C., October 31, 2007)**

**Resulting Civil/Administrative Enforcement Action(s):**

- C. SEC v. Ingersoll-Rand Company Limited (D.D.C., October 31, 2007)**

**Entities and Individuals:**

- Ingersoll-Rand Company Limited (Ingersoll-Rand), deferred prosecution agreement announced and civil complaint filed October 31, 2007.
- Ingersoll-Rand Italiana (I-R Italiana) charged October 31, 2007.
- Thermo King Ireland Limited (Thermo King), charged October 31, 2007.

**Criminal Charges:**

- Conspiracy:
  - to falsify books and records (I-R Italiana)
  - to commit wire fraud (I-R Italiana and Thermo King)

**Civil Charges:**

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

On October 31, 2007, the Department of Justice filed criminal charges against two subsidiaries of Ingersoll-Rand Company Limited (Ingersoll-Rand), in connection with payments made by these and other subsidiaries to obtain contracts administered by the United Nations Oil for Food Program (OFFP). On the same day, the SEC filed a settled civil complaint against Ingersoll-Rand, charging it with violations of the internal controls and books and records provisions of the FCPA arising out of the same underlying conduct.

According to court documents, between October 2000 and August 2003, employees of three subsidiaries, one unnamed, Ingersoll-Rand Italiana, and Thermo King Ireland Limited, made \$963,148 in kickback payments to the Iraqi government, and promised an additional \$544,697, in exchange for contracts to provide road construction equipment, air compressors and parts, and refrigerated trucks under the OFFP. In order to both pay for and conceal these kickbacks, the subsidiaries inflated the price of contracts by approximately 10 percent before submitting them to the U.N. for approval. The subsidiaries never revealed to the U.N. the fact that the contract prices contained a kickback to the Iraqi government.

Criminal Disposition:

To resolve its criminal liability arising out of this kickback scheme, Ingersoll-Rand, on behalf of itself and its subsidiaries, entered into a three-year deferred prosecution agreement with the Department and agreed to pay a criminal fine of \$2.5 million.

Civil Disposition:

In a simultaneous agreement with the SEC, Ingersoll-Rand was enjoined from future violations of the FCPA, ordered to disgorge \$1,710,034 in profits and \$560,953 in prejudgment interest, and required to pay a civil penalty of \$1.95 million.

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**72. York International Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. York International Corporation (D.D.C., October 1, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. York International Corporation (D.D.C., October 1, 2007)**

Entities and Individuals:

- York International Corporation, charged October 1, 2007; civil complaint filed October 1, 2007.

Criminal Charges:

- Conspiracy:
  - to falsify books and records
  - to commit wire fraud
- Falsification of books and records
- Wire Fraud

Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Iraq, Bahrain, Egypt, India, Turkey, UAE, Nigeria, China and various other European and Middle Eastern countries 1999-2006.

*Summary:*

On October 1, 2007, York International Corporation (York) was charged in a three-count criminal information with conspiracy, falsification of its books and records, in violation of the FCPA, and wire fraud. These charges stemmed in part from the actions of York Air Conditioning and Refrigeration FZE (FZE), a subsidiary, whose employees and agents paid approximately \$647,110 in kickbacks to Iraqi government officials from 2000 to 2003 in order to obtain contracts to provide air-conditioning, ventilation and refrigeration equipment and services to Iraq under the United Nations Oil-for-Food Program (OFFP).

In a related action, the SEC filed a settled civil complaint against York, alleging that York violated the anti-bribery provisions of the FCPA by paying bribes to UAE officials to secure business. Specifically, the SEC charged that in 2003 and 2004, York's Delaware-based subsidiary, York Air Conditioning and Refrigeration, Inc. (YACR), paid approximately \$522,500 to an intermediary while knowing that most of the money was intended to bribe UAE officials to secure contracts in connection with the construction of a government-owned luxury hotel. Altogether, thirteen illicit payments were made on this project, totaling \$550,000. In connection with these corrupt payments, the SEC charged that York had failed to devise and maintain effective system of internal controls to prevent and detect numerous violations and that York failed to accurately record in its books and records the bribes in the UAE, as well as the kickbacks in Iraq and illicit consultancy payments made in various other countries.

In addition to the corrupt payments in the UAE and Iraq, from 2001 through 2006, York, through certain subsidiaries, including YACR, made over \$7.5 million in illicit payments to secure orders on certain commercial and government projects in the Bahrain, Egypt, India, Turkey, China, Nigeria, and various other European and Middle Eastern countries. York's subsidiaries devised elaborate schemes to conceal these kickback payments to certain individuals who had enough influence to secure contracts for York's subsidiaries. These payments were referred to internally as "consultancy payments"; however, no bona fide services were performed in exchange for these payments. A total of 854 improper consultancy payments were made on approximately 774 contracts – with 302 of these projects involving government end-users, such as government owned companies, public hospitals, or schools.

*Criminal Disposition:*

York entered into a deferred prosecution agreement with the Department of Justice, whereby it agreed to pay a criminal fine of \$10 million and engage an independent FCPA compliance monitor for a period of three-years.

*Civil Disposition:*

In a settlement with the SEC, York was enjoined from future violations and ordered to disgorge \$8,949,132 in profits and \$1,083,748 in prejudgment interest, and to pay a civil penalty of \$2 million. The SEC's settlement also required that the company retain a compliance monitor for three years.

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**73. Immucor, Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. Gioacchino De Chirico (N.D. Ga., September 28, 2007)
- B. In the Matter of Immucor, Inc., et al. (September 27, 2007)

*Entities and Individuals:*

- Immucor, Inc., cease-and-desist order issued September 27, 2007.

- Gioacchino De Chirico, President and CEO, cease-and-desist order issued September 27, 2007; civil complaint filed September 28, 2007.

Civil Charges:

- Bribery of foreign officials (Immucor)
- Internal controls violations (Immucor)
- Falsification of books and records (Immucor)
- False accounting violations (De Chirico)
- Aiding and abetting internal controls violations (De Chirico)
- Aiding and abetting falsification of books and records (De Chirico)

Location and Time Period of Misconduct: Italy, 2004.

Summary:

On September 28, 2007, the SEC commenced administrative proceedings against Immucor, Inc. and its President and CEO, Gioacchino De Chirico, alleging that they engaged in violations of the anti-bribery, books and records, and internal controls provisions of the FCPA, as well as false accounting violations and aiding and abetting related violations. The SEC simultaneously filed a settled civil complaint against De Chirico in the U.S. District Court for the Northern District of Georgia, which charged him with much of the same conduct.

These charges stemmed from an incident in April 2004 when Immucor paid €13,500 to the director of a public hospital in Milan, Italy, as a quid pro quo for the hospital director favoring Immucor in selecting contracts for medical supplies and equipment. The complaint further alleged that De Chirico knowingly approved a false invoice that described the €13,500 payment as a consulting fee for services in connection with opportunities in Switzerland, which De Chirico knew the director had not performed.

Civil Disposition:

To settle the SEC's charges, both Immucor and De Chirico consented to the issuance of a cease-and-desist order enjoining them from any future violations of the FCPA. On October 2, 2007, U.S. District Judge Horace T. Ward also ordered De Chirico to pay a \$30,000 civil penalty.

## **74. Syncor International Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Syncor Taiwan, Inc. (C.D. Cal., December 4, 2002)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Monty Fu (D.D.C., September 27, 2007)**  
**C. SEC v. Syncor International Corporation (D.D.C., December 10, 2002)**  
**D. In the Matter of Syncor International Corporation (December 10, 2002)**

Entities and Individuals:

- Syncor International Corporation (Syncor), civil complaint filed December 10, 2002.
- Syncor Taiwan, Inc., charged December 4, 2002.
- Monty Fu, Founder and Chairman, civil complaint filed September 27, 2007.

Criminal Charges:

- Bribery of foreign officials (Syncor Taiwan)

Civil Charges:

- Bribery of foreign officials (Syncor)
- Internal controls violations (Syncor)
- Falsification of books and records (Syncor)
- False accounting violations (Fu)
- Aiding and abetting internal controls violations (Fu)
- Aiding and abetting falsification of books and records (Fu)

Location and Time Period of Misconduct: Taiwan, 1997-2002.

Summary:

In December 2002, the Department of Justice and the SEC filed criminal and civil charges against Syncor Taiwan, Inc., and its parent company, Syncor International Corporation (Syncor), a radiopharmaceutical company based in Woodland Hills, California. The Department charged Syncor Taiwan in a one-count criminal information in the Central District of California with violating the anti-bribery provisions of the FCPA, while the civil suit filed by the SEC in the District of Columbia charged Syncor with violations of the anti-bribery, internal controls, and books and records provisions of the FCPA.

These charges stemmed from a series of improper payments made by Syncor and its employees to physicians employed by hospitals owned by the legal authorities in Taiwan. At least \$344,110 in “commissions” were paid to state-employed Taiwanese physicians between January 1, 1997 and November 6, 2002, for the purpose of obtaining and retaining business from those hospitals and in connection with the purchase and sale of unit dosages of certain radiopharmaceuticals. These payments were authorized by Monty Fu, Syncor Taiwan’s founder and board chairman, while in the Central District of California, and were paid in cash in Taiwan via hand-delivered, sealed envelopes. For his role in authorizing these illicit payments, the SEC filed a civil complaint against Fu on September 27, 2007 in the District of Columbia.

In addition, Syncor Taiwan made payments to physicians employed by hospitals owned by the legal authorities in Taiwan in exchange for their referrals of patients to medical imaging centers owned and operated by the defendant. These improper payments, also made pursuant to the authorization of Fu, totaled at least \$113,007 during the period from January 1, 1998 through November 6, 2002.

Criminal Disposition:

Syncor Taiwan pleaded guilty on December 10, 2002, to a one-count information charging the company with violating the anti-bribery provisions of the FCPA. Pursuant to its plea agreement, Syncor was sentenced to a criminal fine of \$2 million.

Civil Disposition:

Pursuant to the SEC’s settled civil action, filed on December 10, 2002, Syncor agreed to pay a \$500,000 civil penalty and to accept a cease-and-desist order enjoining it from future violations of the FCPA. As part of the administrative cease-and-desist order issued by the SEC, Syncor was required to retain an independent compliance consultant for a period 130 days. During this period, the consultant was to review and make recommendations regarding Syncor’s compliance programs. Except in certain circumstances, Syncor was then required to implement the consultant’s recommendations within 90 days of having received the consultant’s report.

On September 27, 2007, without admitting or denying the more recent SEC allegations, Monty Fu agreed to a civil penalty of \$75,000 and a permanent injunction against future violations of the FCPA.



**75. Bristow Group Inc.**

**Resulting Civil/Administrative Enforcement Action(s):**

**A. In the Matter of Bristow Group Inc. (September 26, 2007)**

**Entities and Individuals:**

- Bristow Group Inc., cease-and-desist order issued September 26, 2007.
- AirLog International, Ltd., (cease-and-desist order issued against parent).
- Pan African Airlines Nigeria Ltd., (cease-and-desist order issued against parent).

**Civil Charges:**

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

**Location and Time Period of Misconduct:** Nigeria, 2003 – 2004.

**Summary:**

On September 26, 2007, the SEC instituted administrative proceedings against Bristow Group Inc., a Houston-based and New York Stock Exchange-listed helicopter transportation services and oil and gas production facilities operation company, for violations of the FCPA. The SEC's administrative order alleged that Bristow violated the anti-bribery, internal controls, and books and records provisions of the FCPA as a consequence of the actions of two of its subsidiaries in Nigeria.

Since at least 2003 and through approximately the end of 2004, Bristow Group's Nigerian affiliate, Pan African Airlines Nigeria Ltd. (PAAN), made improper payments totaling \$423,000 to employees of the governments of two Nigerian states to influence them to improperly reduce the amount of expatriate employment taxes payable by PAAN to the respective Nigerian state governments. At the end of each year, PAAN was subject to an expatriate "Pay As You Earn" (PAYE) tax, which was assessed on the salaries of PAAN employees by the government of each Nigerian state where PAAN operated. PAAN then negotiated with government tax officials to lower the amount assessed. In each instance, the PAYE tax demand amount was lowered and a separate cash payment for the tax officials was negotiated. Once PAAN paid the state government and the tax officials, each state government provided PAAN with a receipt reflecting only the amount payable to the state government. All together, PAAN secured an \$854,000 reduction in its PAYE tax liability in exchange for improper payments.

During that same time period, Bristow Group underreported PAAN and another Bristow Group Nigerian affiliate's payroll expenses to certain Nigerian state governments. As a result, Bristow Group's periodic reports filed with the SEC did not accurately reflect certain of the company's payroll-related expenses. Accordingly, the SEC's administrative order found that during this time period, Bristow Group had both lacked sufficient internal accounting controls and mischaracterized the payments as legitimate payroll expenses on its books and records.

**Civil Disposition:**

Without admitting or denying the SEC's allegations, Bristow Group consented to entry of an Administrative Order that required the company to cease-and-desist from committing violations of the anti-bribery, internal controls, and/or books and records provisions of the FCPA.

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## **76. Electronic Data Systems Corporation**

### **Resulting Civil/Administrative Enforcement Action(s):**

- A. In the Matter of Electronic Data Systems Corporation (September 25, 2007)**
- B. SEC v. Chandramowli Srinivasan (D.D.C., September 25, 2007)**

### **Entities and Individuals:**

- Electronic Data Systems Corporation (EDS), cease-and-desist order issued September 25, 2007.
- A.T. Kearney Ltd. – India (ATKI), (cease-and-desist order issued against parent).
- Chandramowli Srinivasan, President of ATKI, civil complaint filed September 25, 2007.

### **Civil Charges:**

- Bribery of foreign officials (Srinivasan)
- Falsification of books and records (EDS)
- Disclosure violations (EDS)
- Regulation violations (EDS)
- False accounting violations (Srinivasan)

### **Location and Time Period of Misconduct:** India, 2001-2003.

### **Summary:**

On September 25, 2007, the SEC filed settled civil and administrative actions against Chandramowli Srinivasan and the Electronic Data Systems Corporation (EDS), alleging that the defendants had violated the anti-bribery and books and records provisions of the FCPA, as well as numerous other federal securities laws. According to the SEC's filings, from early 2001 through September 2003, EDS's former Indian subsidiary, A.T. Kearney Ltd. – India (ATKI), made at least \$720,000 in illicit payments to high-level employees of two Indian state-owned enterprises in order to retain its business with those enterprises. ATKI made these payments at the direction of Srinivasan, ATKI's president, after the officials of the state-owned enterprises threatened to cancel the contracts with ATKI. These bribes allowed EDS to recognize over \$7.5 million in revenues from the Indian companies' contracts after ATKI began paying the bribes.

### **Civil Disposition:**

Pursuant to the administrative proceedings, the SEC issued a cease-and-desist order against EDS, enjoining it from future violations of the FCPA and requiring it to pay \$358,800 in disgorgement and \$132,102 in prejudgment interest.

To resolve the civil suit filed by the SEC, Srinivasan agreed to a permanent injunction enjoining him from future violations of the FCPA and agreed to pay a \$70,000 civil penalty.

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## **77. Paradigm, B.V.**

### **Resulting Criminal Enforcement Action(s):**

- A. In Re Paradigm, B.V. (September 24, 2007)**

### **Entities and Individuals:**

- Paradigm B.V., non-prosecution agreement announced September 24, 2007.

### **Criminal Charges:**

- Bribery of foreign officials

*Location and Time Period of Misconduct:* Indonesia, 2003; Nigeria, 2003 – 2005; Mexico, 2004 – 2005; Kazakhstan, 2005 – 2006; China, 2006.

*Summary:*

On September 24, 2007, the Department of Justice resolved allegations against Paradigm, B.V., a Dutch LLC with its principal place of business in Houston, Texas. Paradigm B.V. uncovered improper payments to foreign officials as it undertook the due diligence required for its anticipated initial public offering, including corrupt payments to employees of state-owned oil and gas companies in China, Indonesia, Kazakhstan, Latvia, Mexico, and Nigeria.

In one instance, Paradigm paid \$22,250 into the Latvian bank account of a British West Indies company recommended as a consultant by an official of KazMunaiGas, Kazakhstan’s national oil company, to secure a tender for geological software. In this case, Paradigm performed no due diligence on the British West Indies company, did not enter into any written agreement with the company, and did not appear to have received any services from the company.

According to the statement of facts, Paradigm also used an agent in China to make commission payments to representatives of a subsidiary of the China National Offshore Oil Company (CNOOC) in connection with the sale of software to the CNOOC subsidiary. In addition, Paradigm directly retained and paid employees of Chinese national oil companies or state-owned entities as so-called “internal consultants” to evaluate Paradigm’s software and to influence their employers’ procurement divisions to purchase Paradigm’s products.

As part of its due diligence, Paradigm also admitted to similar conduct in dealings in Mexico, Indonesia, and Nigeria. In Nigeria, Paradigm representatives agreed to make corrupt payments of between \$100,000 and \$200,000 through an agent to Nigerian politicians to obtain a contract to perform services and processing work for a subsidiary of the Nigerian National Petroleum Corporation.

*Criminal Disposition:*

In recognition of the fact that Paradigm self-reported and undertook full cooperation with enforcement authorities, the Department agreed not to prosecute Paradigm on the condition that the company upheld certain obligations for a period of 18 months. The non-prosecution agreement obliged Paradigm to continue its full cooperation with the investigation, institute rigorous internal controls and other remedial steps, pay a \$1 million criminal fine, and retain an outside compliance counsel.

**78. Textron Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Textron Inc. (August 23, 2007)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Textron Inc. (D.D.C., August 23, 2007)**

*Entities and Individuals:*

- Textron, Inc., charged August 23, 2007; civil complaint filed August 23, 2007.

*Criminal Charges:*

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, Bangladesh, Egypt, India, Indonesia, UAE, 2000-2003.

Summary:

On August 23, 2007, Textron, Inc., a Rhode Island-based industrial equipment company, settled allegations with the Department of Justice and the SEC relating to kickbacks paid to the former Government of Iraq under the United Nations Oil for Food Program (OFFP). As part of a consent agreement with the SEC and a non-prosecution agreement with the Department, Textron acknowledged responsibility for kickbacks paid to the Iraqi government by its David Brown French subsidiaries in exchange for contracts worth \$1,936,936 to provide industrial pumps, gears, and other equipment to Iraqi ministries under the OFFP.

According to settlement documents, the subsidiaries in Textron's Fluid and Power Business Unit paid a total of more than \$650,000 in kickbacks by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval. These kickback payments, which bypassed the U.N. escrow account, were paid by third parties to Iraqi government-controlled accounts. During the course of its own internal investigation, Textron also uncovered an additional 36 illicit payments totaling almost \$115,000 that were made to officials of state-owned companies in countries other than Iraq, including the United Arab Emirates, Bangladesh, Indonesia, Egypt, and India, in order to obtain similar contracts.

Criminal Disposition:

In recognition of Textron's early discovery and reporting of the improper payments, its thorough review of those payments as well as its discovery and review of improper payments made in other countries, and the company's implementation of enhanced compliance policies and procedures, the Department agreed to enter into a non-prosecution agreement with the company. Under this agreement, Textron agreed to pay a criminal fine of \$1,150,000 and continue cooperating with the Department's investigation.

Civil Disposition:

In a settlement agreement with the SEC, Textron agreed to disgorge \$2,284,579 in profits and \$450,461.68 in prejudgment interest, to pay an \$800,000 civil penalty, and to be permanently enjoined from future violations of the FCPA.

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**79. Delta Pine & Land Company**

Resulting Civil/Administrative Enforcement Action(s):

- A. In the Matter of Delta & Pine Land Company, et al. (July 26, 2007)**
- B. SEC v. Delta & Pine Land Company, et al. (D.D.C., July 25, 2007)**

Entities and Individuals:

- Delta & Pine Land Company, civil complaint filed July 25, 2007; cease-and-desist order issued July 26, 2007.
- Turk Deltapine, Inc., civil complaint filed July 25, 2007; cease-and-desist order issued July 26, 2007.

Civil Charges:

- Bribery of foreign officials (Turk Deltapine)
- Internal controls violations (Delta & Pine)

- Falsification of books and records (Delta & Pine)

Location and Time Period of Misconduct: Turkey, 2001-2006.

Summary:

In July 2007, the SEC filed settled civil and administrative actions against Delta & Pine Land Company (Delta & Pine), a Scott, Mississippi-based company engaged in the production and marketing of cottonseed, and its subsidiary, Turk Deltapine, Inc. (Turk Deltapine), charging them with violations of the anti-bribery, internal controls, and books and records provisions of the FCPA. According to the SEC's complaint, from 2001 through 2006, Turk Deltapine paid bribes of \$43,000 to officials of the Turkish Ministry of Agricultural and Rural Affairs in order to obtain governmental reports and certifications necessary to operate in Turkey. Delta & Pine failed to accurately record these payments in its books and records and failed to establish effective internal controls that could have prevented such payments.

Civil Disposition:

In the administrative proceeding, a cease-and-desist order was issued enjoining both defendants from future violations of the FCPA. In addition, Delta & Pine was ordered to retain an independent compliance consultant to review and make recommendations concerning the company's FCPA compliance policies and procedures. In the federal lawsuit, Delta & Pine and Turk Deltapine agreed to the entry of a final judgment requiring them to pay, jointly and severally, a \$300,000 civil penalty.

## **80. ITXC Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Steven J. Ott (D.N.J., July 25, 2007)**
- B. United States v. Roger M. Young (D.N.J., July 25, 2007)**
- C. United States v. Yaw Osei Amoako (D.N.J., September 6, 2006)**

Resulting Civil/Administrative Enforcement Action(s):

- D. SEC v. Steven J. Ott, et al. (D.N.J., September 6, 2006)**
- E. SEC v. Yaw Osei Amoako (D.N.J., September 1, 2005)**

Entities and Individuals:

- ITXC Corporation (ITXC) (never charged – company ceased to exist during investigation).
- Steven Ott, ITXC's Executive Vice President of Global Sales, charged July 25, 2007.
- Roger Young, ITXC's Managing Director for Africa, charged July 25, 2007.
- Yaw Osei Amoako, regional manager for Africa at ITXC, charged September 6, 2006.

Criminal Charges:

- Conspiracy (all defendants)
- Bribery of foreign officials (all defendants)
- Commercial bribery (all defendants)

Civil Charges:

- Bribery of foreign officials (all defendants)
- False accounting violations (all defendants)
- Aiding and abetting falsification of books and records (all defendants)
- Aiding and abetting internal controls violations (Ott and Young)

Location and Time Period of Misconduct: Nigeria, 2002-2004; Rwanda, 2002; Senegal, 2001-2003; Ghana, 2001-2002; Mali, 2002.

Summary:

Three former executives of ITXC Corporation, a global telecommunications company based in Princeton, NJ, have pleaded guilty to conspiring to violate the FCPA and the Travel Act in connection with a scheme to bribe government telecommunications officials in four African countries. ITXC was a publicly traded company that provided telecommunication services, primarily Voice Over Internet Protocol (VOIP) services, to carriers across the globe. In pleading, the defendants admitted that between September 1999 and October 2004, they conspired with each other and other former ITXC employees and officers to make corrupt payments totaling approximately \$450,000 to employees of foreign state-owned and foreign-owned telecommunications carriers in Nigeria, Rwanda, Senegal, and Mali to obtain and retain contracts for ITXC. For example, in Nigeria, ITXC entered into a service agreement with and agreed to pay a consulting company headed by an official of NITEL, the state-owned Nigerian telecommunications authority, in exchange for assistance in obtaining agreements with other service providers in the country. Between November 2002 and May 2004, ITXC wire transferred approximately \$166,541.31 to the Nigerian bank account of the foreign official's company.

Criminal Disposition:

Steven J. Ott, ITXC's Executive Vice-President of Global Sales, was sentenced on July 21, 2008 to five years' probation, including 6 months' home confinement and 6 months' community confinement, and a \$10,000 fine. Roger Michael Young, ITXC's Managing Director for Africa and the Middle East, was sentenced on September 2, 2008 to five years' probation, including 3 months' home confinement and 3 months' community confinement, and a \$7,000 fine. The third executive, Yaw Osei Amoako, was sentenced in August 2007 to 18 months' imprisonment and a \$7,500 fine.

Civil Disposition:

On May 6, 2008, the SEC announced that it had obtained final judgments in civil suits filed against Ott, Young, and Amoako. Pursuant to these judgments, the defendants were permanently enjoined from future violations of the FCPA. In addition, Amoako agreed to disgorge \$150,411 in wrongfully-received profits and \$38,042 in pre-judgment interest.

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**81. Oily Rock**

Resulting Criminal Enforcement Action(s):

- A. In Re Omega Advisors, Inc. (July 6, 2007)**
- B. United States v. Viktor Kozeny, et al. (S.D.N.Y., May 12, 2005)**
- C. United States v. Hans Bodmer (S.D.N.Y., August 5, 2003)**
- D. United States v. Clayton Lewis (S.D.N.Y., July 31, 2003)**
- E. United States v. Thomas Farrell (S.D.N.Y., March 10, 2003)**

Entities and Individuals:

- Omega Advisors, Inc., non-prosecution agreement announced July 6, 2007.
- Viktor Kozeny, Head of Investment Consortium, indicted May 12, 2005.
- Frederic Bourke, Investor, indicted May 12, 2005.
- David Pinkerton, Investment Manager, indicted May 12, 2005.
- Hans Bodmer, Lawyer, indicted August 5, 2003.
- Clayton Lewis, Investment Manager, indicted July 31, 2003.
- Thomas Farrell, Employee of Kozeny's investment companies, charged March 10, 2003.

#### Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to violate the Travel Act (Kozeny, Bourke, Pinkerton)
  - to commit money laundering (all defendants except Farrell)
- Bribery of foreign officials (all defendants except Bodmer)
- Money laundering (Kozeny, Bourke, Pinkerton)
- Making false statements (Bourke, Pinkerton)

Location and Time Period of Misconduct: Azerbaijan, 1997-1998.

#### Summary:

On May 12, 2005, Viktor Kozeny, Frederic A. Bourke Jr., and David Pinkerton were indicted in the Southern District of New York on charges of conspiracy to violate the FCPA and Travel Act, substantive FCPA violations, substantive Travel Act Violations, conspiracy to commit money laundering, substantive money laundering charges, and, in the case of Bourke and Pinkerton, making false statements. These charges stemmed from their role in a scheme to pay millions of dollars worth of bribes to Azeri government officials to ensure that the defendants' investment consortium would gain, in secret partnership with the Azeri officials, a controlling interest in the State Oil Company of the Azerbaijan Republic (SOCAR) and its substantial oil reserves.

According to evidence presented in the trial of Bourke, in August 1997, Kozeny allegedly agreed to transfer to corrupt Azeri officials two-thirds of the vouchers and options purchased by his investment consortium, Oily Rock, and to give them two-thirds of all of the profits arising from his investment consortium's participation in SOCAR's privatization. In addition, evidence presented at trial showed that in June 1998, Bourke knew that Kozeny arranged for Oily Rock to increase its authorized share capital from \$150 million to \$450 million so that the additional \$300 million worth of Oily Rock shares could be transferred to one or more of the Azeri officials as a further bribe payment. Bourke also arranged for two of the corrupt officials to travel to New York City on different occasions in 1998 to receive medical treatment, for which Oily Rock paid. Thereafter, in interviews with the FBI in April and May of 2002, Bourke falsely stated that he was not aware that Kozeny had made the alleged payments to the Azeri Officials.

Three others have been charged in connection with their roles in this bribery scheme. Thomas Farrell, a former employee of Oily Rock, was charged in an information with one count of conspiracy to violate the FCPA and one count of violating the FCPA's anti-bribery provisions. On July 31, 2003, Clayton Lewis, a former principal of Omega Advisors and a co-investor in the scheme, was indicted on one count of conspiracy to violate the FCPA and one count of conspiracy to commit money laundering. On August 5, 2003, a grand jury in New York returned an indictment charging the third individual, Hans Bodmer, a Swiss lawyer who represented Kozeny and his investment consortium, with conspiring to violate the FCPA's anti-bribery provisions and conspiracy to commit money laundering. At the United States' request, Korea extradited Mr. Bodmer to the United States in 2004.

In June 2007, the Department entered into a non-prosecution agreement with Omega Advisors, regarding its role as a major investor in the consortium.

#### Criminal Disposition:

Following a six-week jury trial, Bourke was found guilty by a federal jury in Manhattan on July 10, 2009, of conspiracy to violate the FCPA and the Travel Act, and making false statements to the FBI. Evidence presented at trial established that Bourke was a knowing participant in a scheme to bribe senior government officials in Azerbaijan with several hundred million dollars in shares of stock, cash, and other gifts. In November 2009, he was sentenced to one year and a day imprisonment, followed by 3 years' supervised release, and ordered to pay a \$1 million criminal penalty. Bourke subsequently appealed his

conviction to the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit, whereupon the Government filed a cross-appeal. On December 14, 2011, the U.S. Court of Appeals affirmed the July 2009 jury conviction of Bourke.

On January 26, 2010, the Court of Appeals for the Commonwealth of the Bahamas issued a decision overturning a September 28, 2006 ruling by a Bahamian magistrate, and thereby blocking Viktor Kozeny's extradition to the U.S. This decision is being appealed to the U.K. Privy Council.

Hans Bodmer pleaded guilty in October 2004 to money laundering. The FCPA count against Bodmer had been previously dismissed by the Court because the court deemed that prior to the 1998 amendments to the FCPA, foreign nationals could not be criminally prosecuted under the FCPA because they were outside U.S. jurisdiction. Bodmer is currently awaiting sentencing.

On February 10, 2004, Clayton Lewis pleaded guilty before District Judge Naomi Buchwald to superseding information charging him with one count of conspiracy to violate the FCPA and one count of violating the FCPA's anti-bribery provisions. Lewis's sentencing is scheduled for August 7, 2012.

Thomas Farrell pleaded guilty on October 3, 2003 before Judge Richard M. Berman in the U.S. District Court for the Southern District of New York. Farrell's sentencing is pending.

In order to resolve potential criminal charges related to the FCPA, Omega Advisors entered into a non-prosecution agreement with the Department in June 2007 and agreed to forfeit \$500,000.

In July 2008, the Government dismissed the case against Mr. Pinkerton.

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## **82. Former United States Congressman, William J. Jefferson**

### **Resulting Criminal Enforcement Action(s):**

#### **A. United States v. William J. Jefferson (E.D. Va., June 4, 2007)**

### **Entities and Individuals:**

- William J. Jefferson, former U.S. Congressman, indicted June 4, 2007.

### **Criminal Charges:**

- Conspiracy:
  - to solicit bribes by a public official
  - to deprive citizens of honest services by wire fraud
  - to bribe foreign officials
- Solicitation of bribes by a public official
- Deprivation of honest services by wire fraud
- Bribery of foreign officials
- Money laundering
- Obstruction of justice
- Racketeering

### **Location and Time Period of Misconduct:** Nigeria, 2000-2005.

### **Summary:**

On June 4, 2007, William J. Jefferson of New Orleans, Louisiana became the first U.S. public official ever charged with violating the FCPA, when he was charged with, among other things, one count of bribery in violation of the FCPA and one count of conspiring to solicit bribes, deprive honest services, and violate the anti-bribery provisions of the FCPA.

According to evidence presented at his trial, from August 2000 through August 2005, Congressman Jefferson, while serving as an elected member of the U.S. House of Representatives, used his position and his office to corruptly seek, solicit, and direct that things of value be paid to him and his



family members in exchange for his performance of official acts to advance the interests of the people and businesses who paid him the bribes.

In addition, according to court documents and evidence presented at trial, Jefferson conspired to violate the FCPA by offering, promising, and making payments to foreign officials to advance various business endeavors in which he and his family had a financial interest. More specifically, Jefferson was responsible for negotiating, offering and delivering payments of bribes to a high-ranking official in the executive branch of the Government of Nigeria in order to induce the official to use his position to assist a telecommunications joint venture in securing the governmental approvals necessary for its success. In return for taking these official acts in furtherance of this bribery conspiracy, this joint venture agreed to pay Jefferson and his family things of value.

**Criminal Disposition:**

On August 5, 2009, following a nine-week trial, a federal jury convicted former Congressman Jefferson of conspiracy, bribery, deprivation of honest services, money laundering, and racketeering. While he was acquitted on the substantive FCPA charge, Jefferson was convicted of one count of conspiracy, one object of which was the bribery of foreign officials in violation of the FCPA. On November 13, 2009, Jefferson was sentenced to 13 years' imprisonment, followed by three years' supervised release, and ordered to forfeit more than \$470,000. Jefferson appealed his conviction to the U.S. Court of Appeals for the 4<sup>th</sup> Circuit. On March 26, 2012, the U.S. Court of Appeals for the 4<sup>th</sup> Circuit affirmed in part and vacated in part the decision of the district court. The case was remanded to the district court for further proceedings consistent with the court's decision. On April 20, 2012, the district court amended the judgment and Count 10, one count of Scheme to Deprive Citizens of Honest Services by Wire Fraud, was vacated. On the same day, Jefferson was sentenced under the amended judgment to 12 years imprisonment, followed by three years' supervised released and ordered to pay a criminal penalty of \$1,000.

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**83.     The Mercator Corporation**

**Resulting Criminal Enforcement Action(s):**

- A.   United States v. James H. Giffen, et al. (S.D.N.Y., April 2, 2003)**
- B.   United States v. J. Bryan Williams (S.D.N.Y., April 2, 2003)**

**Resulting Civil/Administrative Enforcement Action(s):**

- C.   United States v. Approx. \$84 Million (S.D.N.Y., May 3, 2007)**

**Entities and Individuals:**

- James H. Giffen, Chairman of The Mercator Corporation, indicted April 2, 2003.
- J. Bryan Williams, Senior Executive of Mobil Oil, indicted April 2, 2003.
- The Mercator Corporation, charged August 6, 2010.

**Criminal Charges:**

- Conspiracy:
  - to commit wire fraud (Giffen)
  - to commit mail fraud (Giffen)
  - to bribe foreign officials (Giffen)
  - to commit money laundering (Giffen)
  - to defraud the United States by impairing and impeding its lawful functions (Giffen, Williams)
- Bribery of foreign officials (Giffen, Mercator)
- Wire fraud (Giffen)

- Mail fraud (Giffen)
- International money laundering (Giffen)
- Money laundering (Giffen)
- Obstructing the enforcement of the Internal Revenue laws (Giffen)
- Subscribing to false tax returns (Giffen, Williams)
- Tax Evasion (Williams)
- Failure to supply information regarding foreign bank accounts on an income tax return (Giffen)

Civil Charges:

- Forfeiture

Location and Time Period of Misconduct: Kazakhstan, 1995-1999.

Summary:

On April 2, 2003, James H. Giffen, the Chairman of The Mercator Corporation (Mercator), a merchant bank with offices in New York and the Republic of Kazakhstan, was indicted in the Southern District of New York on charges that he made a series of illegal payments to senior Kazakh officials in connection with numerous oil deals in that country. According to court documents, Giffen allegedly made corrupt payments to senior Kazakh officials in connection with the following transactions in which Giffen represented the Republic of Kazakhstan: 1) Mobil Oil's 1996 purchase of a 25% share in the Tengiz oil field; (2) Mobil Oil's 1995 agreement to finance the processing and sale of gas condensate from the Karachaganak oil and gas field; (3) Amoco's 1997 purchase of a share in the Caspian Pipeline Consortium; (4) Texaco and other oil companies' purchase of a share in the Karachaganak oil and gas field in 1998; (5) Mobil and other oil companies' 1998 purchase of exploration rights in the Kazakh portion of the Caspian Sea, and; (6) Phillips Petroleum's 1998 purchase of Caspian Sea exploration rights.

Subsequently, on August 6, 2010, Mercator was charged with one count of violating the anti-bribery provisions of the FCPA in connection with the purchase of two snowmobiles in November 1999. These snowmobiles were later shipped to Kazakhstan for delivery to a senior Kazakh official.

According to the original indictment, Giffen and Mercator were advisors to the Kazakh government on strategic planning, development of foreign investment and the negotiation of priority investment projects relating to the exploration, development, production, transportation, and processing of oil and gas. During this period, Giffen had held the title of counselor to the President of Kazakhstan. According to the charges, Mobil oil agreed to pay the success fees owed by Kazakhstan to Giffen and Mercator, and out of those fees, Giffen made unlawful payments of \$22 million dollars to secret Swiss accounts beneficially owned by two high level Kazakh officials.

In addition, according to the Indictment, between 1995 and 2000, Giffen caused approximately \$70 million paid by various oil companies into escrow accounts in Switzerland in connection with the purchase of oil and gas rights in Kazakhstan to be diverted into secret Swiss bank accounts under his control. Giffen then used this money to make additional unlawful payments of approximately \$55 million to the two senior officials of the Kazakh Government.

Also on April 2, 2003, J. Bryan Williams a senior executive at Mobil Oil, was charged in connection with a kickback and tax evasion scheme involving a related oil deal in Kazakhstan. According to court documents, Williams was sent by Mobil's Chairman to finalize the negotiations with Kazakhstan regarding Mobil's purchase for approximately \$1 billion of a 25% interest in the Tengiz oil field in 1996. After the Tengiz deal closed, Mobil paid \$41 million to a New York merchant bank that represented the Republic of Kazakhstan in the transaction. The merchant bank's Chairman kicked back \$2 million of that payment to Williams, by transferring money through a secret Swiss bank account.

In 2007, the Department filed a civil forfeiture action against approximately \$84 million, plus interest, which was being held in a bank account in Switzerland. According to the Department's filings, this money included at least \$51.7 million in proceeds from Giffen's alleged scheme to bribe senior Kazakh officials.

*Criminal Disposition:*

On August 6, 2010, Giffen pleaded guilty to a one-count superseding information charging him with failure to disclose control of a Swiss bank account on his 1996 income tax return. Giffen was sentenced on November 19, 2010, to time served. Mercator also pleaded guilty on August 6, 2010, to one count of violating the FCPA's anti-bribery provisions. Mercator was sentenced on November 19, 2010, and ordered to pay a fine in the amount of \$32,000.

Previously, on September 18, 2003, Williams pleaded guilty to conspiracy and tax evasion charges and was sentenced to 46 months in prison. Williams was also ordered to pay a \$25,000 fine and was required to pay taxes on the \$2 million kickback that he received in connection with the Tengiz oil field deal.

*Civil Disposition:*

Pursuant to a 2007 agreement between the United States, Switzerland and Kazakhstan, the \$84 million on deposit in Switzerland is being used by a non-governmental organization in Kazakhstan, independent of the Kazakh government, to benefit underprivileged Kazakh children.

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**84. Baker Hughes Incorporated**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Baker Hughes Services International, Inc. (S.D. Tex., April 11, 2007)**
- B. United States v. Baker Hughes Incorporated (S.D. Tex., April 11, 2007)**

*Resulting Civil/Administrative Enforcement Action(s):*

- C. SEC v. Baker Hughes Incorporated, et al. (S.D. Tex., April 26, 2007)**
- D. In the Matter of Baker Hughes Inc. (September 12, 2001)**
- E. SEC v. Eric L. Mattson, et al. (S.D. Tex., September 11, 2001)**
- F. United States, et al. v. KPMG Siddharta Siddharta & Harsono, et al. (S.D. Tex., September 11, 2001)**

*Entities and Individuals:*

- Baker Hughes Incorporated (Baker Hughes), cease-and-desist order issued September 12, 2001; charged April 11, 2007; civil complaint filed April 26, 2007.
- Baker Hughes Services International, Inc. (BHSI), charged April 11, 2007.
- Roy Fearnley, BSHI's Business Development Manager, civil complaint filed April 26, 2007.
- Eric L. Mattson, CFO of Baker Hughes, civil complaint filed September 12, 2001.
- James W. Harris, Controller of Baker Hughes, civil complaint filed September 11, 2001.
- KPMG Siddharta Siddharta & Harsono, civil complaint filed September 11, 2001.
- Sonny Harsono, Partner at KPMG Siddharta Siddharta & Harsono, civil complaint filed September 11, 2001.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (Baker Hughes, BHSI)
  - to falsify books and records (Baker Hughes, BHSI)
- Bribery of foreign officials (BHSI)
- Falsification of books and records (BHSI)

*Civil Charges:*

- Bribery of foreign officials (all civil defendants)
- False accounting (Baker Hughes)
- Internal controls violations (Baker Hughes, Mattson, Harris)
- Falsification of books and records (Baker Hughes, Mattson, Harris)
- Aiding and abetting Baker Hughes' internal controls violations (Fearnley, KPMG, Harsono)
- Aiding and abetting Baker Hughes' falsification of books and records (Fearnley, KPMG, Harsono)

Location and Time Period of Misconduct: Indonesia, 1999; Kazakhstan, 2001-2003.

Summary:

In April 2007, Baker Hughes Services International (BHSI), and its parent company Baker Hughes Incorporated (Baker Hughes), were charged in separate criminal informations filed in the Southern District of Texas, in connection with a scheme to pay bribes to Kazakh government officials from 2001 through 2003. According to subsequent plea agreements, Baker Hughes and BHSI violated the FCPA by paying approximately \$4.1 million in bribes to an intermediary, knowing that the intermediary would transfer all or part of the corrupt payments to an official of Kazakhoil, the state-owned oil company. These corrupt payments were paid through a consulting firm retained as an agent for Baker Hughes in connection with a major oil field services contract. On April 26, 2007, the SEC filed civil complaints against Baker Hughes and BHSI's Business Development Manager, Roy Fearnley, charging them with FCPA violations in connection with this same bribery scheme.

According to court documents, the government of Kazakhstan and Kazakhoil, entered into an agreement with a consortium of four international oil companies for the purpose of developing and operating a giant oil field known as Karachaganak in northwestern Kazakhstan. In February 2000, BHSI submitted a bid, on behalf of Baker Hughes, to perform comprehensive services such as project management, oil drilling, and support services in connection with the Karachaganak project.

Kazakhoil wielded considerable influence as Kazakhstan's national oil company, and the ultimate award of any contract by the consortium of international oil companies depended upon the favorable recommendation of Kazakhoil officials. After BHSI submitted its bid for the Karachaganak project and before the award was announced, Kazakhoil officials demanded that Baker Hughes pay a commission to a "consulting firm" located on the Isle of Man, to act as its agent. Although the consulting firm had performed no services to assist Baker Hughes, in September 2000, BHSI agreed to pay a commission equal to 2 percent of the revenue earned on the Karachaganak project, and 3 percent on future projects in Kazakhstan. Baker Hughes was awarded the contract for Karachaganak in October 2000. From May 2001 through November 2003, Baker Hughes paid a total of \$4.1 million in "commissions" from a BHSI bank account in Houston to an account of the consulting firm in London.

In a previous matter, two former employees of Baker Hughes, a partner in an Indonesian accounting firm, and a partner of the accounting firm were charged by the SEC in connection with a scheme to pay bribes to Indonesian government officials. According to the SEC's filings, on March 9, 1999, James Harris, a former Baker Hughes Controller, allegedly learned that Sonny Harsono, a partner in KPMG Siddharta Siddharta & Harsono (KPMG), had authorized payment of \$75,000 to an Indonesian tax official to reduce a tax assessment for PT Eastman Christensen (PTEC), an Indonesian company owned by Baker Hughes, from \$3.2 million to \$270,000. In March 1999, Harris and Eric L. Mattson, the former CFO of Baker Hughes, allegedly authorized payment of the bribe despite the General Counsel's warning that such conduct would violate the FCPA. After receiving the invoice, PTEC allegedly paid KPMG's invoice and improperly recorded the transaction as payment for professional services. On March 23, 1999, PTEC received a tax assessment of approximately \$270,000. After Baker Hughes's General Counsel and FCPA Advisor discovered the subject payment, Baker Hughes attempted to stop the payment and voluntarily disclosed the payment to enforcement authorities.

Criminal Disposition:

As part of the plea agreement, BHSI agreed to pay a criminal fine of \$11 million, serve a three-year term of organizational probation, and adopt a comprehensive anti-bribery compliance program. Baker Hughes, pursuant to a deferred prosecution agreement, agreed to hire an independent monitor for three years to oversee the creation and maintenance of a robust compliance program and to continue to cooperate completely with the Department in ongoing investigations into corrupt payments by company employees and managers.

Civil Disposition:

In April 2007, Baker Hughes reached a settlement with the SEC whereby it acknowledged that it had violated a 2001 cease-and-desist order issued by the SEC in connection with the Indonesian bribery conduct. As part of the settlement, Baker Hughes was enjoined from future violations and required to obtain an independent FCPA compliance monitor and pay \$10 million in civil penalties and \$19,944,778 in disgorgement of all profits it earned in connection with the bribes, as well as \$3,133,237.41 in prejudgment interest. In the same civil matter, a judgment was entered against Fearnley enjoining him from future violations and ordering \$5,000 in disgorgement and \$7,635.51 in prejudgment interest.

The civil complaint against Mattson and Harris was dismissed by the court in 2003.

In 2001, Harsono and KPMG consented to the entry of an injunction from violating and aiding and abetting the violation of the anti-bribery provisions of the FCPA and the internal controls and books and records provisions of the Exchange Act.

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**85. Monsanto Company**

Resulting Criminal Enforcement Action(s):

**A. United States v. Monsanto Company (D.D.C., January 6, 2005)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Charles Michael Martin (D.D.C., March 6, 2007)**

**C. SEC v. Monsanto Company (D.D.C., January 6, 2005)**

**D. In the Matter of Monsanto Company (January 6, 2005)**

Entities and Individuals:

- Monsanto Company (Monsanto), charged, civil complaint filed, and cease-and-desist order issued January 6, 2005.
- Charles Michael Martin, Monsanto's Government Affairs Director for Asia, civil complaint filed March 6, 2007.

Criminal Charges:

- Bribery of foreign officials (Monsanto)
- Falsification of books and records (Monsanto)

Civil Charges:

- Bribery of foreign officials (Monsanto, Martin)
- Internal controls violations (Monsanto)
- Falsification of books and records (Monsanto)
- False accounting (Monsanto, Martin)
- Aiding and abetting Monsanto's internal controls violations (Martin)
- Aiding and abetting Monsanto's falsification of books and records (Martin)

*Location and Time Period of Misconduct:* Indonesia, 1997-2002.

Summary:

Monsanto, a producer of various agricultural products, hired an Indonesian consulting company to assist it in obtaining various Indonesian governmental approvals and licenses necessary to sell its genetically modified products in Indonesia. At the time, the Indonesian government required an environmental impact study before authorizing the cultivation of genetically modified crops. After a change in governments in Indonesia, Monsanto sought, unsuccessfully, to have the new government, in which the senior environment official had a post, amend or repeal the requirement for the environmental impact statement.

Having failed to obtain the senior environment official's agreement to amend or repeal this requirement, in 2002, Charles Martin, the Government Affairs Director for Asia for Monsanto, authorized and directed an Indonesian consulting firm to make an illegal payment totaling \$50,000 to the senior environment official to "incentivize" him to agree to do so. Martin also directed representatives of the Indonesian consulting company to submit false invoices to Monsanto for "consultant fees" to obtain reimbursement for the bribe, and agreed to pay the consulting company for taxes that company would owe by reporting income from the "consultant fees."

In February 2002, an employee of the Indonesian consulting company delivered \$50,000 in cash to the senior environment official, explaining that Monsanto wanted to do something for him in exchange for repealing the environmental impact study requirement. The senior environment official promised that he would do so at an appropriate time. In March 2002, Monsanto, through its Indonesian subsidiary, paid the false invoices thus reimbursing the consulting company for the \$50,000 bribe, as well as the tax it owed on that income. A false entry for these "consulting services" was included in Monsanto's books and records. The senior environment official never authorized the repeal of the environmental impact study requirement.

Criminal Disposition:

On January 6, 2005, Monsanto Company entered into a deferred prosecution agreement with the Department of Justice in which it agreed to pay a \$1 million penalty and admit to violations of the FCPA.

Civil Disposition:

Monsanto consented to pay a \$500,000 civil penalty to the Commission. On March 6, 2007, the SEC filed a settled enforcement action charging Charles Michael Martin. Without admitting or denying the charges, Martin consented to the entry of a final judgment permanently enjoining him from violating and/or aiding and abetting violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Martin also agreed to pay a \$30,000 civil penalty.

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**86. Dow Chemical Company**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Dow Chemical Company (D.D.C., February 13, 2007)**
- B. In the Matter of Dow Chemical Company (February 13, 2007)**

Entities and Individuals:

- Dow Chemical Company (Dow), civil complaint filed and cease-and-desist order issued February 13, 2007.

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: India, 1996-2001.

Summary:

DE-Nocil, a subsidiary of Dow, made approximately \$200,000 in improper payments to Indian government officials, including \$39,700 to an official in India's Central Insecticides Board to expedite the registration of three DE-Nocil products. Most of the payments were made through contractors who added fictitious charges to their bills or issued false invoices to DE-Nocil and then directed the money to "consultants" or officials. DE-Nocil made \$435,000 in profits because of the accelerated registration, \$329,295 of which went to Dow, based on Dow's ownership interest at the time. DE-Nocil also paid approximately \$87,400 in small (\$100 or less) payments to state-level agricultural inspectors to keep them from interfering in the sale of DE-Nocil products. DE-Nocil also made payments to sales tax officials and customs officials, as well as gave improper gifts, travel, and entertainment to other government officials (\$19,000), totaling more than \$70,000.

Civil Disposition:

In an agreement resolving the administrative and civil enforcement actions taken by the SEC, the SEC ordered Dow Chemical to cease-and-desist from future violations and pay a \$325,000 civil penalty.

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**87. Vetco International, Ltd.<sup>20</sup>**

Resulting Criminal Enforcement Action(s):

- A. United States v. Vetco Gray Controls, Inc., et al. (S.D. Tex., January 5, 2007)**
- B. United States v. Aibel Group Limited (S.D. Tex., January 5, 2007)**

Entities and Individuals:

- Vetco Gray Controls, Inc., charged January 5, 2007.
- Vetco Gray Controls, Ltd., charged January 5, 2007.
- Vetco Gray UK Ltd., charged January 5, 2007.
- Aibel Group Ltd., charged January 5, 2007; superseding information filed November 12, 2008.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants except Aibel Group)
- Bribery of foreign officials (Aibel Group)

Location and Time Period of Misconduct: Nigeria, 2002-2005.

Summary:

On January 5, 2007, three wholly-owned subsidiaries of Vetco International, Ltd., a global supplier of products and services for oil drilling production, were charged in the Southern District of Texas with conspiring to violate the FCPA and violating the anti-bribery provisions of the FCPA in connection with the corrupt payment of approximately \$2.1 million to Nigerian government officials. According to court documents, beginning in February 2001, Vetco International, and its predecessor and several related companies, began providing engineering and procurement services, as well as subsea construction equipment, for Nigeria's first deepwater oil drilling operation, known as the Bonga Project. From at least September 2002 to at least April 2005, in connection with their business in Nigeria, these subsidiaries made at least 378 corrupt payments through a major international freight forwarding and customs clearance company to employees of the Nigerian Customs Service, and these payments were intended to assist Vetco in avoiding paying customs duties.

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<sup>20</sup> Also see Cases 0 and 91.



On the same date, Aibel Group, Ltd. (Aibel Group), another wholly owned subsidiary of Vetco International, entered into a deferred prosecution agreement regarding the same bribery scheme. Subsequently, on November 12, 2008, Aibel Group, a United Kingdom corporation, was charged in a two-count superseding information charging the company with a conspiracy to violate the FCPA and a substantive violation of the FCPA.

*Criminal Disposition:*

On February 6, 2007, Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd. each pleaded guilty and agreed to pay criminal fines of \$6 million, \$8 million, and \$12 million, respectively, for a total of \$26 million. In addition to the criminal fines, the plea agreements required the defendants to hire an independent monitor to oversee the creation and maintenance of a robust compliance program. Aibel Group, another wholly owned subsidiary of Vetco International, simultaneously entered into a deferred prosecution agreement regarding the same underlying conduct.

Subsequently, on November 21, 2008, Aibel Group pleaded guilty to the two-count superseding information, thereby admitting that it was not in compliance with the deferred prosecution agreement it had signed with the Department of Justice in February 2007. As part of the plea agreement, Aibel Group was ordered to pay a \$4.2 million criminal fine and to serve a two-year term of organizational probation that requires, among other things, that it submit periodic reports regarding its progress in implementing anti-bribery compliance measures.

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**88. Alcatel CIT**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Christian Sapsizian, et al. (S.D. Fla., December 19, 2006)**

*Entities and Individuals:*

- Alcatel CIT
- Christian Sapsizian, Alcatel's Vice President for Latin America, indicted December 19, 2006.
- Edgar Valverde Acosta, CEO of Alcatel de Costa Rica S.A., superseding indictment filed March 20, 2007.

*Criminal Charges:*

- Conspiracy to launder money (Valverde Acosta)
- Bribery of foreign officials (Sapsizian and Valverde Acosta)

*Location and Time Period of Misconduct:* Costa Rica, 2000-2004.

*Summary:*

From February 2000 through September 2004, French national Christian Sapsizian, Vice President for Latin America for Alcatel Inc., conspired with co-defendant Edgar Valverde Acosta, a Costa Rican citizen who was Alcatel's senior country Officer in Costa Rica, and others to pay more than \$2.5 million in bribes to senior Costa Rican officials in order to obtain a mobile telephone contract on behalf of Alcatel. The payments, funneled through one of Alcatel's Costa Rican consulting firms, were made to a director of Instituto Costarricense de Electricidad (ICE), the state-owned telecommunications authority in Costa Rica, which was responsible for awarding all telecommunications contract. According to court documents, the ICE director was an advisor to a senior government official and the payments were shared with the senior government official. The payments were intended to cause the ICE director and the senior government official to exercise their influence to initiate a bid process which favored Alcatel's technology and to vote to award Alcatel a mobile telephone contract. Alcatel was in fact awarded a \$149 million mobile telephone contract in August 2001.

Criminal Disposition:

Sapsizian pleaded guilty on June 7, 2007, and on September 23, 2008, was sentenced to 30 months in prison and ordered to forfeit \$261,500. Valverde Acosta is currently a fugitive.

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**89. Statoil, ASA**

*Resulting Criminal Enforcement Actions:*

**A. United States v. Statoil, ASA (S.D.N.Y., October 13, 2006)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. In the Matter of Statoil, ASA (October 13, 2006)**

*Entities and Individuals:*

- Statoil, ASA, charged October 13, 2006; cease-and-desist order issued October 13, 2006.

*Criminal Charges:*

- Bribery of foreign officials

*Civil Charges:*

- Bribery of foreign officials
- False Accounting violations
- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Iran, 2001-2002.

*Summary:*

In 2001 and 2002, Statoil sought to expand its business internationally, and focused specifically on Iran as a country in which to secure oil and gas development rights. At the time, Iran was awarding contracts for the development of the South Pars field, one of the largest natural gas fields in the world. In 2001, Statoil developed contacts with an Iranian government official who was believed to have influence over the award of oil and gas contracts in Iran. Following a series of negotiations with the Iranian official in 2001 and 2002, Statoil entered into a “consulting contract” with an offshore intermediary company.

The purpose of that consulting contract—which called for the payment of more than \$15 million over 11 years—was to induce the Iranian official to use his influence to assist Statoil in obtaining a contract to develop portions of the South Pars field and to open doors to additional Iranian oil and gas projects in the future. Two bribe payments totaling more than \$5 million were actually made by wire transfer through a New York bank account, and Statoil was awarded a South Pars development contract that was expected to yield millions of dollars in profit.

On October 13, 2006, Statoil was charged in a two-count information filed in the Southern District of New York with violating the FCPA by making corrupt payments to Iranian officials and by falsifying its books and records in characterizing the bribe payments as consulting fees.

Criminal Disposition:

Pursuant to a deferred prosecution agreement, Statoil paid a \$10.5 million fine, which had been reduced by \$3 million to take into account a fine paid in Norway. Statoil also agreed to the appointment of a three-year corporate compliance monitor.

Civil Disposition:

Statoil agreed to disgorge \$10.5 million in ill-gotten profits and prejudgment interest to the SEC. Statoil further agreed to an order to cease-and-desist from future violations and to obtain an independent FCPA compliance monitor for three years.

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**90. InVision Technologies, Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re InVision Technologies, Inc. (December 6, 2004)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. David M. Pillor (N.D. Cal., August 15, 2006)**

**C. SEC v. GE InVision, Inc. (N.D. Cal., February 14, 2005)**

**D. In the Matter of GE InVision, Inc. (February 14, 2005)**

Entities and Individuals:

- InVision Technologies, Inc. (InVision) (later became GE InVision, Inc.), non-prosecution agreement announced December 6, 2004.
- GE InVision, Inc. (successor to InVision), civil complaint filed and cease-and-desist order issued February 14, 2005.
- General Electric Company, agreement announced December 6, 2004.
- David M. Pillor, InVision's Senior Vice President for Sales and Marketing, civil complaint filed August 15, 2006.

Criminal Charges:

- Bribery of foreign officials (InVision)
- Failure to implement internal controls (InVision)

Civil Charges:

- Bribery of foreign officials (InVision)
- Internal controls violations (InVision)
- Falsification of books and records (InVision, Pillor)
- Aiding and abetting InVision's internal controls violations (Pillor)

Location and Time Period of Misconduct: Thailand, 2002-2004; China, 2002-2004; Philippines, 2001-2002.

Summary:

In December 2004, InVision Technologies, Inc. (InVision) entered into a non-prosecution agreement with the Department of Justice in connection with a series of improper payments to foreign officials in the Kingdom of Thailand, the People's Republic of China (PRC), and the Republic of the Philippines. These improper payments had been discovered in the course of due diligence conducted by General Electric Company (GE) in connection with its proposed acquisition of InVision. GE and InVision then conducted their own internal investigation and voluntarily disclosed their findings to the Department of Justice and the SEC. The investigations by the Department and the SEC revealed that InVision, through the conduct of certain employees, was aware of a high probability that its agents or distributors in Thailand, the PRC, and the Philippines had paid or offered to pay money to foreign officials or political parties in connection with transactions or proposed transactions for the sale by InVision of its airport security screening machines. In February 2005, the SEC filed a settled civil complaint against GE

InVision, InVision's corporate successor, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

On August 15, 2006, the SEC filed a civil complaint against David M. Pillor in the Northern District of California, alleging that, as InVision's Senior Vice President for Sales and Marketing, Pillor had indirectly falsified InVision's books and records and had aided and abetted InVision's internal controls violations in relation to these improper payments.

*Criminal Disposition:*

On December 6, 2004, InVision Technologies entered into a two-year non-prosecution agreement with the Department of Justice in which it admitted to violations of the FCPA, agreed to pay \$800,000 in penalties, agreed to implement a rigorous compliance program with an independent monitor, and agreed to cooperate fully in the ongoing parallel investigations by the Department of Justice and the SEC.

In a related agreement, GE, which had recently completed its acquisition of InVision, agreed to ensure compliance by InVision with its obligations under the non-prosecution agreement and to effect FCPA compliance programs within its new InVision business.

*Civil Disposition:*

On February 14, 2005, the SEC entered a cease-and-desist order from future violations against GE InVision and ordered the company to pay \$589,000 in disgorgement and \$28,703.57 in prejudgment interest. The company was also ordered to pay a civil penalty of \$500,000 and to obtain an independent compliance monitor.

On August 15, 2006, the SEC filed a settled action against Pillor enjoining him from future violations and ordering him to pay \$65,000 in civil penalties.

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**91. ABB Ltd.**<sup>21</sup>

*Resulting Criminal Enforcement Action(s):*

**A. United States v. ABB Vetco Gray, Inc., et al. (S.D. Tex., June 22, 2004)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. John Samson, et al. (D.D.C., July 14, 2006)**

**C. SEC v. ABB Ltd. (D.D.C., November 30, 2004)**

*Entities and Individuals:*

- ABB Ltd., civil complaint filed November 30, 2004.
- ABB Vetco Gray, Inc., charged June 22, 2004.
- ABB Vetco Gray UK Ltd., charged June 22, 2004.
- ABB Vetco Gray Nigeria Ltd., not charged.
- John Samson, Regional Sales Manager for West Africa for Vetco Gray Nigeria Ltd., civil complaint filed July 14, 2006.
- John G. A. Munro, Senior Vice President of Operations for ABB Vetco Gray UK Ltd., civil complaint filed July 14, 2006.
- Ian N. Campbell, Vice President of Finance for ABB Vetco Gray UK Ltd., civil complaint filed July 14, 2006.
- John H. Whelan, Vice President of Sales for ABB Vetco Gray, Inc., civil complaint filed July 14, 2006.

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<sup>21</sup> Also see Cases 0 and 87.

*Criminal Charges:*

- Bribery of foreign officials

*Civil Charges:*

- Bribery of foreign officials (all defendants)
- Internal controls violations (ABB Ltd.)
- Books and records violations (ABB Ltd.)
- False accounting violations (Samson, Munro, Campbell, Whelan)
- Aiding and abetting ABB's internal controls violations (Samson, Munro, Campbell, Whelan)
- Aiding and abetting ABB's falsification of books and records (Samson, Munro, Campbell, Whelan)

*Location and Time Period of Misconduct:* Nigeria, 1998-2002.

*Summary:*

On June 22, 2004, one U.S. and one U.K. subsidiary of ABB Ltd., a Swiss company, were charged with two counts of bribery in violation of the FCPA in connection with oil construction projects in Nigeria. According to court documents, the two subsidiaries, ABB Vetco Gray, Inc. and ABB Vetco Gray UK Ltd., paid bribes to officials of NAPIMS, a Nigerian government agency that evaluates and approves potential bidders for contract work on oil exploration projects in Nigeria, including bidders seeking subcontracts with foreign oil and gas companies. According to the stipulated statement of facts, the companies paid more than \$1 million in exchange for obtaining confidential bid information and favorable recommendations from Nigerian government agencies in connection with seven oil and gas construction contracts related to the offshore Bonga Oil Field in Nigeria, from which the companies expected to realize profits of almost \$12 million.

In a related matter, the SEC charged ABB Ltd., whose stock is traded in the U.S. through American Depositary Receipts, with violations of the books and records and internal controls provisions of the FCPA, arising from the Nigerian conduct involved in the criminal proceedings, as well as suspected illicit payments in Kazakhstan and Angola. In addition to the bribes paid to officials of NAPIMS, the SEC's complaint alleged that from 2000 to 2002, ABB's subsidiaries made corrupt payments to engineers employed by Sonangol, the Angolan state-owned oil company, who had responsibility for the technical evaluation of bids submitted to Sonangol. These improper payments were issued in the context of three separate training trips sponsored by ABB, twice to the United States and Brazil, and once to Norway and the United Kingdom. In each instance, ABB's Vetco Gray U.S. and UK subsidiaries paid all the travel, meals, lodging and entertainment of the Sonangol engineers, and also provided them with cash spending money of \$120 to \$200 per day, at a time when Angola's gross annual per capital income was just \$710. These cash payments—made for the purpose of obtaining or retaining business with Sonangol—were passed out to the Sonangol engineers prior to their departures for each trip, and were improperly recorded in ABB's books and records. In addition, the SEC alleged that from December 2001 through at least February 2003, ABB's Kazakh subsidiaries made more than \$125,000 in improper payments to Kazakh companies owned by a government official employed in Kazakhstan's state oil and gas companies.

In a related case, on July 5, 2006, the Commission filed a settled civil complaint charging four former employees of ABB Ltd. subsidiaries with violating the anti-bribery provisions of the FCPA. The Commission's complaint alleged that the four former employees -- John Samson, a former regional sales manager for West Africa, John G. A. Munro, a former senior vice president of operations, Ian N. Campbell, a former vice president of finance, and John H. Whelan, a former vice president of sales -- participated in a scheme to offer, approve, and/or pay bribes to Nigerian government officials in furtherance of ABB's bid to obtain a \$180 million contract to provide equipment for an oil drilling project in Nigeria's offshore Bonga Oil Field.

*Criminal Disposition:*

In July 2004, ABB Vetco Gray, Inc. and ABB Vetco Gray UK Ltd. each pleaded guilty to violations of the FCPA and agreed to pay a combined fine of \$10.5 million.

*Civil Disposition:*

To settle the civil charges brought by the SEC, ABB Ltd. agreed to disgorge \$5.9 million in illicit profits and prejudgment interest.

On July 5, 2006, Without admitting or denying the allegations in the complaint, Samson, Munro, Campbell, and Whelan consented to the entry of final judgments that: (1) permanently enjoined each of them from future violations of the FCPA; (2) ordered each to pay a civil monetary penalty (\$50,000 as to Samson, and \$40,000 each as to Munro, Campbell and Whelan); and (3) ordered Samson to pay \$64,675 in disgorgement and prejudgment interest.

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**92. Titan Corporation**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Titan Corporation (S.D. Cal., March 1, 2005)**
- B. United States v. Steven Lynwood Head (S.D. Cal., June 23, 2006)**

*Resulting Civil/Administrative Action(s):*

- C. SEC v. Titan Corporation (D.D.C., March 1, 2005)**

*Entities and Individuals:*

- Titan Corporation, charged March 1, 2005; civil complaint filed March 1, 2005.
- Titan Africa, Inc. (criminal and civil charges filed against parent).
- Steven Lynwood Head, CEO, Titan Africa, Inc., charged June 23, 2006.

*Criminal Charges:*

- Bribery of foreign officials (Titan)
- Falsification of books and records (Titan and Head)
- Filing a false tax return (Titan)

*Civil Charges:*

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Benin, 1999-2000.

*Summary:*

Titan Corporation (Titan), a Delaware Corporation headquartered in San Diego, CA, is a global provider of military intelligence and communications solutions. In October 1998, Titan established a joint venture with Afronetwork, a Benin telecommunications company, to build a satellite-based telephone system in Benin. In a November meeting between Titan and Afronetwork, Titan was introduced to a “business advisor” to the president of Benin. Titan subsequently hired the “advisor” to assist with the contract in exchange for 5% of the value of all equipment installed in Benin. Revenues from the contract were close to \$100 million, and Titan subsequently made over \$2.3 million in payments to the agent, including via offshore accounts in Monaco. Titan recorded the payments as “consulting services” in its

corporate books and records and broke the payments into smaller increments to make them appear more reasonable.

**Criminal Disposition:**

On March 1, 2005, Titan pleaded guilty to a three-count information charging it with violating the anti-bribery and books and records provisions of the FCPA and with assisting in the filing of a false tax return. As part of its plea agreement, Titan agreed to pay a \$13 million criminal fine.

Head also pleaded guilty on June 23, 2006, and was sentenced in September 2007 to six months' imprisonment, 3 years' supervised release, and a fine of \$5,000.

**Civil Disposition:**

To settle the SEC's civil charges, Titan agreed to pay \$12.62 million in disgorgement along with \$2.86 million in prejudgment interest. In addition, Titan was ordered to pay a civil penalty of \$13 million, which was deemed satisfied by payment of the same amount in criminal fines.

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**93. Bribery of a Senior Iraqi Police Official**

**Resulting Criminal Enforcement Action(s):**

**A. United States v. Faheem Mousa Salam (D.D.C., June 7, 2006)**

**Entities and Individuals:**

- Faheem Mousa Salam, Defense Contractor, charged June 7, 2006.

**Criminal Charges:**

- Bribery of foreign officials

**Location and Time Period of Misconduct:** Iraq, 2006.

**Summary:**

Faheem Mousa Salam admitted that in January 2006, while working in Baghdad as a civilian translator for a U.S. army subcontractor, he offered a senior Iraqi police official \$60,000 in exchange for the official's assistance in facilitating the purchase of 1,000 armored vests and a sophisticated map printer for a sales price of approximately \$1 million. Salam requested the official use his position with the Iraqi police force to coordinate the sale of the material to the multinational Civilian Police Assistance Training Team (CPATT), an organization designed to train the Iraqi police and border guard in Iraq. Salam admitted that he later made final arrangements with an undercover agent of the Office of the Special Inspector General for Iraq Reconstruction who was posing as a procurement officer for CPATT. Salam admitted that during the subsequent discussions with the undercover agent he offered a separate \$28,000 to \$35,000 "gift" to the agent to process the contracts.

**Criminal Disposition:**

Salam pleaded guilty on August 4, 2006, and was sentenced on February 2, 2007, to 36 months' imprisonment, 24 months' supervised release, and 250 hours' community service.

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**94. Oil States International, Inc.**

**Resulting Civil/Administrative Enforcement Action(s):**

**A. In the Matter of Oil States International, Inc. (April 27, 2006)**

**Entities and Individuals:**

- Oil States International, Inc., civil complaint filed April 27, 2006.
- Hydraulic Well Control, LLC (civil complaint filed against parent).

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Venezuela, 2003-2004.

Summary:

From 2003 through 2004, Oil States International, Inc. (Oil States), through certain employees of one of its subsidiaries, Hydraulic Well Control LLC (HWC), provided approximately \$348,350 in improper payments to employees of Petróleos de Venezuela, S.A. (PdVSA), an energy company owned by the government of Venezuela. Previously, HWC had hired a consultant to help it secure business from PdVSA. In December 2003, three PdVSA employees approached HWC's consultant and asked the consultant to submit inflated bills to HWC for his services and pay these excess funds to the PdVSA employees in the form of kickbacks. These employees also threatened to undermine or undo HWC's contracts with PdVSA if the company refused to pay the requested kickbacks. In turn, the consultant told three HWC employees about the scheme, and the employees agreed to accept inflated invoices. Ultimately, from December 2003 through November 2004, HWC approximately \$348,350 in illicit payments to the consultant, knowing that some or all of this money would be transferred to foreign government officials for the purpose of obtaining or retaining business for HWC and Oil States. HWC then improperly recorded the payments in its accounting books and records as ordinary business expenses, which were subsequently incorporated into the books and records of its parent company.

Civil Disposition:

On April 27, 2006, the SEC instituted settled administrative proceedings against Oil States, whereby the company was ordered to cease-and-desist from future violations of the FCPA. No disgorgement or civil penalties were ordered.

## **95. Bribery of Liberian Officials for False Accreditation of Academic Institutions**

Resulting Criminal Enforcement Action(s):

**A. United States v. Richard John Novak (E.D. Wash., October 5, 2005)**

Entities and Individuals:

- Richard John Novak, indicted October 5, 2005; superseding information filed March 20, 2006.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials
  - to commit wire and mail fraud
- Bribery of foreign officials

Location and Time Period of Misconduct: Liberia, 2002-2004.

Summary:

In a superseding information filed on March 20, 2006, Richard John Novak was charged with one count of bribery in violation of the FCPA and an additional count of conspiracy to bribe foreign officials, to commit mail fraud, and to commit wire fraud. These charges stemmed from a series of bribe payments,



in excess of \$43,000, which were made to several Liberian officials in order to obtain accreditation from Liberia for Saint Regis University, Robertstown University, and James Monroe University, and to induce Liberian officials to issue letters and other documents to third parties falsely representing that Saint Regis University was properly accredited by Liberia. These “online universities” were in fact part of an online “diploma mill” scheme, and they provided no legitimate educational services and had no legitimate academic accreditation. According to court documents, between October 2002 and September 2004, approximately \$19,200 was wired from an account in the State of Washington controlled by Novak’s co-defendants, Dixie Ellen Randock and Steven Karl Randock, Sr., to a bank account in Maryland in the name of the Liberian Consul. These corrupt payments benefited officials of the Liberian Embassy in Washington, D.C., the Director of National Commission of Higher Education of Liberia, and the Director General of Higher Education of Liberia.

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*Criminal Disposition:*

Novak pleaded guilty to the superseding information on March 20, 2006 and was subsequently sentenced on October 2, 2008, to 3 years’ probation and 300 hours of community service.

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**96. Diagnostic Products Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. DPC (Tianjin) Co. Ltd. (C.D. Cal., May 20, 2005)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. In the Matter of Diagnostic Products Corporation (May 20, 2005)**

*Entities and Individuals:*

- Diagnostic Products Corporation, cease-and-desist order issued May 20, 2005.
- DPC (Tianjin) Co. Ltd., charged May 20, 2005.

*Criminal Charges:*

- Bribery of foreign officials

*Civil Charges:*

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

*Location and Time Period of Misconduct:* China, 1991-2002.

*Summary:*

From late 1991 through December 2002, DPC (Tianjin) Co. Ltd., a subsidiary of Diagnostic Products Corporation (DPC), paid approximately \$1.6 million in bribes in the form of illegal “commissions” to physicians and laboratory personnel employed by government-owned hospitals in the People’s Republic of China (PRC) in exchange for agreements that the hospitals would obtain DPC Tianjin’s products and services. These bribes constituted violations of the anti-bribery provisions of the FCPA because the physicians and laboratory personnel were employed by hospitals owned by the legal authorities in the PRC, and thus, were “foreign officials” as defined by the FCPA. In most cases, the bribes were paid in cash and hand-delivered by DPC Tianjin salespeople to the person who controlled purchasing decisions for the particular hospital department. DPC Tianjin recorded the payments on its

books and records as “selling expenses.” DPC Tianjin’s general manager regularly prepared and submitted to DPC its financial statements, which contained its sales expenses. The general manager also caused approval of the budgets for sales expenses of DPC Tianjin, including the amounts DPC Tianjin intended to pay to the officials of the hospitals in the following quarter or year. The “commissions,” typically between 3 percent and 10 percent of sales, allowed DPC Tianjin to earn approximately \$2 million in profits from the sales.

*Criminal Disposition:*

On May 20, 2005, DPC (Tianjin) Co. pleaded guilty to violating the FCPA, agreed to adopt internal compliance measures, cooperate with ongoing criminal and SEC civil investigations, and appoint an independent compliance expert to audit the company’s compliance program and monitor its implementation of new internal policies and procedures. DPC Tianjin also paid a criminal penalty of \$2 million.

*Civil Disposition:*

To resolve civil charges brought by the SEC, DPC agreed to the issuance of an order to cease-and-desist from future violations and to disgorge \$2,038,727 in profits and \$749,895 in prejudgment interest to the SEC.

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**97. Micrus Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Micrus Corporation (March 2, 2005)**

*Entities and Individuals:*

- Micrus Corporation, non-prosecution agreement announced March 2, 2005.

*Criminal Charges:*

- Bribery of foreign officials
- Internal controls violations

*Location and Time Period of Misconduct:* France, 2002-2004; Turkey, 2004; Spain, 2002; Germany, 2003.

*Summary:*

From January 2002, Micrus Corporation, a privately held company based in Sunnyvale, California, and its Swiss subsidiary Micrus S.A. (collectively Micrus), engaged in, among other businesses, the sale and distribution of embolic coils in foreign jurisdictions. Between January 2002 and August 2004, in connection with sales to public and private medical facilities in some of those countries, Micrus entered into several types of arrangements with doctors, pursuant to which the doctors used or promoted Micrus products in exchange for payments, commissions or honoraria (the “foreign payments”). During that time, Micrus also granted to some of those foreign doctors options to purchase shares of Micrus securities (after those securities were issued to the public in an Initial Public Offering). These payments ultimately totaled approximately \$1,400,000. Of that amount, approximately \$105,000 was paid as part of an arrangement that clearly violated the FCPA and the law in the foreign jurisdiction where the payment was made, and an additional approximately \$250,000 was comprised of payments for which Micrus did not obtain the necessary prior administrative or legal approval as required under the laws of the relevant foreign jurisdiction.

*Criminal Disposition:*

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On February 28, 2005, Micrus agreed to a two-year non-prosecution agreement and paid \$450,000 in penalties; agreed to implement a rigorous compliance program with a monitor for a period of three years; and agreed to cooperate fully in the investigation by the Department of Justice.

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**98. HealthSouth Corporation**

**Resulting Criminal Enforcement Action(s):**

- A. United States v. Robert E. Thomson, *et al.* (N.D. Ala., July 1, 2004)**
- B. United States v. Thomas Carman (N.D. Ala., March 2, 2004)**
- C. United States v. Vincent Nico (N.D. Ala., March 2, 2004)**

**Entities and Individuals:**

- Robert E. Thomson, President and COO, HealthSouth in-patient division, indicted July 1, 2004.
- James C. Reilly, Group Vice President of Legal Services, HealthSouth, indicted July 1, 2004.
- Thomas Carman, Executive Vice President, HealthSouth, charged March 2, 2004.
- Vincent Nico, Vice President, HealthSouth, charged March 2, 2004.

**Criminal Charges:**

- Conspiracy:
  - to violate the Travel Act (Thomson and Reilly)
  - to falsify books and records (Thomson and Reilly)
- Falsification of books and records (Thomson and Reilly)
- Commercial bribery (Thomson and Reilly)
- Wire fraud (Nico)
- False statements to the FBI (Carman)

**Location and Time Period of Misconduct:** Saudi Arabia, 2000-2003.

**Summary:**

HealthSouth was a corporation organized under the laws of the state of Delaware with headquarters in Birmingham, Alabama. In March and July 2004, the Department of Justice filed charges against four HealthSouth executives in connection with an alleged scheme to bribe the director general of a Saudi Arabian foundation in furtherance of HealthSouth's effort to secure an agreement to provide staffing and management services for a 450-bed hospital in Saudi Arabia. Under the contract that HealthSouth eventually executed with the Saudi Arabian foundation, HealthSouth was to receive \$10 million annually over a five-year term.

On July 1, 2004, the Department indicted Robert E. Thomson, President and COO of HealthSouth's in-patient division, and James C. Reilly, the Group Vice President of Legal Services for Health South, in the Northern District of Alabama. According to the indictment, the Saudi Arabian foundation's director general solicited a \$1 million payment from HealthSouth, ostensibly as a "finder's fee." Against the advice of counsel, HealthSouth allegedly agreed to pay the Saudi Arabian foundation's director general the sum of \$500,000 per year for a five-year period in return for his agreement to execute the contract on behalf of the Saudi Arabian foundation. In order to conceal the true nature of the scheme, HealthSouth officers, including Thomson and Reilly, allegedly arranged for the Saudi Arabian foundation's director general to execute a bogus consulting contract with a HealthSouth-affiliated entity in Australia. Until the scheme was detected in 2003, HealthSouth paid the amounts due under this phony consulting contract by wiring them to Australia, where they were subsequently wired to the foundation's director general in Saudi Arabia, according to the indictment. The HealthSouth officers allegedly

undertook this conduct despite the fact that they had been specifically advised beforehand by an attorney retained by HealthSouth that such conduct would amount to a violation of federal criminal law.

The indictment charged that Thomson and Reilly violated the Travel Act by using the facilities of interstate commerce to promote unlawful activity, namely bribery in violation of Alabama law. In addition, the indictment charges that Thomson and Reilly violated the Foreign Corrupt Practices Act by causing HealthSouth's books, records and accounts to falsely and fraudulently reflect that the payments made to fund the bogus consulting contract were made for legitimate purposes.

Previously, on March 2, 2004, the Department had filed charges against HealthSouth's former Vice President, Vincent Nico, and former Executive Vice President, Thomas Carman. Nico was charged with wire fraud while Carman was charged with having made false statements to the FBI.

*Criminal Disposition:*

Nico pleaded guilty on April 22, 2004, and was sentenced to 36 months' probation, including 6 months' home detention, and a \$250,000 fine. Nico also forfeited more than \$1 million. Carman pleaded guilty on April 27, 2004, and was later sentenced to 36 months' probation and a \$500 fine. Thomson and Reilly were acquitted at trial.

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**99. Schering-Plough Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. Schering-Plough Corporation (D.D.C., June 9, 2004)**
- B. In the Matter of Schering-Plough Corporation (June 9, 2004)**

*Entities and Individuals:*

- Schering-Plough Corporation, civil complaint filed and cease-and-desist order issued June 9, 2004.

*Civil Charges:*

- Falsification of books and records
- Internal controls violations

*Location and Time Period of Misconduct:* Poland, 1999-2002.

*Summary:*

On June 9, 2004, the SEC commenced civil and administrative enforcement actions against Schering-Plough Corporation (Schering-Plough), a pharmaceutical company, for violations of the books and records and internal controls provisions of the FCPA. The Commission's complaint against Schering-Plough alleged that, between February 1999 and March 2002, one of Schering-Plough's foreign subsidiaries, Schering-Plough Poland, made improper payments to a charitable organization called the Chudow Castle Foundation. At the time of these payments, the foundation was headed by an individual who was the Director of the Silesian Health Fund, a Polish governmental body that, among other things, provided money for the purchase of pharmaceutical products and influenced the purchase of those products by other entities, such as hospitals, through the allocation of health fund resources. According to the complaint, Schering-Plough Poland paid approximately \$76,000 to the Chudow Castle Foundation to induce the Director to influence the health fund's purchase of Schering-Plough's pharmaceutical products.

*Civil Disposition:*

On June 16, 2004, without admitting or denying the Commission's allegations, Schering-Plough entered into a settlement with the SEC, whereby the company was ordered to cease-and-desist from future violations and pay a civil penalty in the amount of \$500,000.

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## **100. BJ Services Company**

### **Resulting Civil/Administrative Enforcement Action(s):**

#### **A. In the Matter of BJ Services Company (March 10, 2004)**

### **Entities and Individuals:**

- BJ Services Company, cease-and-desist order issued March 10, 2004.

### **Civil Charges:**

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

### **Location and Time Period of Misconduct:** Argentina, 1998-2002.

### **Summary:**

On March 10, 2004, the SEC instituted settled administrative proceedings against BJ Services Company (BJ Services), for violations of the anti-bribery, internal controls, and books and records provisions of the FCPA. According to the SEC's filing, during 2001, BJ Services, through its wholly owned Argentinean subsidiary B.J. Services, S.A. ("BJSA"), made illegal or questionable payments, totaling approximately 72,000 pesos to Argentinean customs officials. Further, from 1998 through April 2002 certain undocumented or improperly characterized payments were made totaling approximately 151,000 pesos. In certain instances, entries were made in BJSA's books and records to conceal the payments. During the same period, BJ Services experienced certain breaches in the existing accounting policies, controls and procedures in certain areas of its Latin American Region.

### **Civil Disposition:**

BJ Services was ordered to cease-and-desist from future violations. No disgorgement or civil penalty was ordered by the SEC.

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## **101. American Bank Note Holographics, Inc.**

### **Resulting Criminal Enforcement Action(s):**

#### **A. United States v. Joshua C. Cantor (S.D.N.Y., July 17, 2001)**

### **Resulting Civil/Administrative Enforcement Action(s):**

#### **B. SEC v. Joshua C. Cantor (S.D.N.Y., April 10, 2003)**

#### **C. SEC v. American Bank Note Holographics, Inc. (S.D.N.Y., July 18, 2001)**

#### **D. In the Matter of American Bank Note Holographics, Inc. (S.D.N.Y., July 18, 2001)**

### **Entities and Individuals:**

- American Bank Note Holographics, Inc. (ABNH), civil complaint filed and cease-and-desist order issued July 18, 2001.
- Joshua C. Cantor, President of ABNH, charged July 17, 2001; civil complaint filed April 10, 2003.

### **Criminal Charges:**

- Conspiracy:
  - to commit securities fraud

- to falsify books and records
- to lie to auditors

Civil Charges:

- Falsification of books and records

Location and Time Period of Misconduct: Saudi Arabia, 1998-1999.

Summary:

In July 2001, the Department of Justice and the SEC simultaneously filed criminal and civil charges against Joshua C. Cantor, the President of American Bank Note Holographics, Inc. (ABNH), in connection with certain violations of the FCPA and other federal securities laws. In addition, the SEC filed two settled actions against ABNH, a manufacturer of holographic products that are used in a variety of commercial applications, such as credit cards. According to court documents, the Saudi Arabian Monetary Agency (SAMA) approached ABNH with the opportunity to be the supplier of a hologram for a commemorative Saudi Arabian banknote. In May 1998, one of ABNH's overseas sales agents informed ABNH that its bid would need to include "an additional sum to cover consultancy fees." Cantor, as President of ABNH, knew that at least a portion of these consultancy fees was to go to Saudi Arabian officials in exchange for the contract. ABNH eventually won the bid and consultancy fees in the amount of \$239,000 were transferred to a Swiss bank account in Geneva held in the name of "Satapco." ABNH, along with numerous other former executives, were also charged by the SEC in connection with a broad range of violations of federal securities.

Criminal Disposition:

Cantor pleaded guilty on July 17, 2001. He has not yet been sentenced.

Civil Disposition:

To settle the civil and administrative enforcement actions undertaken by the SEC, without admitting or denying the Commission's allegations, ABNH and Cantor each agreed to the entry of a cease-and-desist order. ABNH also agreed to pay a civil penalty of \$75,000.

## **102. Bribery of and by World Bank Officials**

Resulting Criminal Enforcement Action(s):

- A. United States v. Ramendra Basu (November 26, 2002)**
- B. United States v. Gautam Sengupta (D.D.C., January 30, 2002)**

Entities and Individuals:

- Ramendra Basu, World Bank Trust Funds manager, charged November 26, 2002.
- Gautam Sengupta, World Bank Task Manager for Africa, charged January 30, 2002.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)

Location and Time Period of Misconduct: World Bank, Ethiopia, Kenya, 1997-2000.

Summary:

In 2002, the Department of Justice charged two World Bank officials, Ramendra Basu, a national of India, and Gautam Sengupta, with conspiring to steer World Bank contracts to certain consultants in

exchange for kickbacks. According to court documents, the two defendants conspired with a Swedish consultant and others to use their official positions with the World Bank to steer World Bank contracts in Ethiopia and Kenya to certain Swedish companies in exchange for approximately \$127,000 in kickbacks. In addition, the defendants admitted that in January 1999, they received a request for a \$50,000 bribe from a Kenyan government official working on a Project Implementation Unit involved in a World Bank-financed project, which was to be paid by the Swedish consultant. Collectively, Basu and Sengupta forwarded this request to the Swedish consultant and passed along related bank account information, despite knowing that the payment was meant to corruptly influence an act or decision of the foreign official in his official capacity, in violation of the anti-bribery provisions of the FCPA.

*Criminal Disposition:*

Sengupta pleaded guilty on February 13, 2002, and was sentenced in 2006, Sengupta to two months' imprisonment and one year of supervised release, which was to include four months of home confinement. Sengupta was also sentenced to pay a criminal fine of \$3,000. Basu pleaded guilty on December 17, 2002, and was sentenced on April 22, 2008, to 15 months in prison, 2 years of supervised release, and 50 hours of community service. On December 2, 2009, the U.S. Court of Appeals for the District of Columbia affirmed the District Court's decision to deny Basu's May 7, 2006 motion to withdraw his guilty plea on the grounds that Basu failed to show that the plea was tainted by any constitutional or procedural error. On March 29, 2010, the Supreme Court denied Basu's petition for a writ of certiorari.

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**103. American Rice, Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. *United States v. David Kay, et al.* (S.D. Tex., December 12, 2001)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. *SEC v. David Kay, et al.* (S.D. Tex., July 30, 2002)**

*Entities and Individuals:*

- American Rice, Inc. (ARI) (not charged).
- Douglas Murphy, President of ARI, indicted December 12, 2001; civil complaint filed July 30, 2002.
- David Kay, Vice President of ARI, indicted March 25, 2002; civil complaint filed July 30, 2002.
- Lawrence Theriot, Caribbean Operations consultant for ARI, civil complaint filed July 30, 2002.

*Criminal Charges:*

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)
- Obstruction of justice (Murphy)

*Civil Charges:*

- Bribery of foreign officials (Kay and Murphy)
- Internal controls violations (Kay)
- Falsification of books and records (Kay)
- Aiding and abetting ARI's falsification of books and records (Kay)
- Aiding and abetting ARI's internal controls violations (Kay)
- Aiding and abetting Kay and Murphy's bribery of foreign officials (Theriot)



Location and Time Period of Misconduct: Haiti, 1998-1999.

Summary:

On December 12, 2001, David Kay, the Vice President of Marketing for American Rice, Inc. (ARI), a Texas corporation, was indicted in the Southern District of Texas on twelve counts of violating the FCPA in connection with a scheme to pay bribes to Haitian customs officials. A superseding indictment against Kay and Douglas Murphy, the President of American Rice, was returned by a grand jury in the Southern District of Texas on March 25, 2002. In addition to adding Murphy to the twelve counts of bribery in violation of the FCPA, the indictment charged Murphy with obstruction of justice and both defendants with conspiring to violate the anti-bribery provisions of the FCPA.

According to evidence presented at trial, between January 1998 and October 1999, Kay, who as Vice President of Marketing was responsible for overseeing ARI's sales in Haiti, authorized corrupt cash payments to Haitian customs officials. These bribery payments, which numbered at least 12 and totaled over \$500,000, were made to customs officials in exchange for reductions in taxes imposed upon ARI's rice imports. Ultimately, these payments allowed ARI to avoid approximately \$1.5 million in Haitian import taxes. Evidence presented at trial also established that Murphy, as President of ARI was aware of the bribery scheme, but took no action to stop the payments.

The reduced import tax liability assisted ARI in obtaining or retaining business because it allowed ARI to retain its competitive price advantage over competitors, including illegal importers of rice, who paid no import dues.

Criminal Disposition:

In April 2002, the district court dismissed the indictment, finding that the conduct alleged did not fall within the FCPA's requirement that the bribes be paid to "assist in obtaining or retaining business." The United States appealed this decision, and, in February 2004, the Court of Appeals for the Fifth Circuit reinstated the indictment.

On October 6, 2004, Kay and Murphy were convicted on all counts contained in the superseding indictment following a two-week jury trial. On June 29, 2005, Murphy was sentenced to 63 months in prison followed by three years of supervised release. Kay was sentenced to 37 months in prison followed by two years of supervised release. Both defendants filed appeals to the U.S. Court of Appeals for the 5<sup>th</sup> Circuit, but the convictions and sentences were upheld.

Civil Disposition:

The civil matter against Kay and Murphy was suspended until sentencing, and the SEC has not yet moved to reopen the case. Theriot agreed to the issuance of a cease-and-desist order and paid an \$11,000 civil penalty.

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**104. BellSouth Corporation**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. BellSouth Corporation (N.D. Ga., January 15, 2002)**
- B. In the Matter of BellSouth Corporation (January 15, 2002)**

Entities and Individuals:

- BellSouth Corporation, civil complaint filed and cease-and-desist order issued January 15, 2002.

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Venezuela, 1997-2000; Nicaragua, 1998-1999.

Summary:

On January 15, 2002, the SEC filed two settled enforcement actions against BellSouth Corporation, charging that two of the company's subsidiaries had engaged in violations of the internal controls and books and records provisions of the FCPA. According to the SEC's Complaint, between September 1997 and August 2000, former senior management of BellSouth's Venezuelan subsidiary, Telcel, C.A. (Telcel), authorized payments totaling approximately \$10.8 million to six offshore companies and improperly recorded the disbursements in Telcel's books and records, based on fictitious invoices, as bona fide services. Telcel's internal controls failed to detect the unsubstantiated payments for a period of at least two years. As an additional consequence of this control deficiency, the Complaint alleged that BellSouth was unable to reconstruct the circumstances or purpose of the Telcel payments, or determine the identity of their ultimate recipients. Telcel was Venezuela's leading wireless provider, contributing more revenue to BellSouth's Latin American Group segment than any other Latin American BellSouth operation.

In addition, the SEC charged that between October 1998 and June 1999, BellSouth's Nicaraguan subsidiary, Telefonía Celular de Nicaragua, S.A.'s (Telefonía), improperly recorded payments to the wife of the Nicaraguan legislator who was the chairman of the Nicaraguan legislative committee with oversight of Nicaraguan telecommunications.

Civil Disposition:

BellSouth was enjoined from future violations and was ordered to pay a \$150,000 civil penalty.

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**105. Chiquita Brands International, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Chiquita Brands International, Inc. (D.D.C., October 3, 2001)**
- B. In the Matter of Chiquita Brands International, Inc. (October 3, 2001)**

Entities and Individuals:

- Chiquita Brands International, Inc., civil complaint filed and cease-and-desist order issued October 3, 2001.
- C.I. Bananos de Exportación, S.A. (civil complaint filed against parent company).
- Comercio Exterior Asesores Limitada (civil complaint filed against parent company).

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Columbia, 1996-1997.

Summary:

On October 3, 2001, the SEC commenced two settled enforcement actions against Chiquita Brands International, Inc. (Chiquita), alleging that the company had violated the books and records and internal controls provisions of the FCPA as a result of the conduct of its Colombian subsidiary, C.I. Bananos de Exportación, S.A. (Banadex). According to the SEC's filings, in September 1995, a Banadex employee in

charge of material and supplies advised Banadex management that renewal of the company's Turbo, Colombia port facility's customs license was in jeopardy because of two previous citations for failure to comply with Colombian customs regulations. The employee further advised Banadex management that replacing the Turbo facility would cost approximately \$1 million.

Without the knowledge or consent of any Chiquita employees outside Colombia and in contravention of Chiquita's policies, Banadex's chief administrative officer authorized the company's customs broker, as well as Banadex's security officer and controller, to make a corrupt payment of the equivalent of \$30,000 to local customs officials to secure the renewal of the port facility's license. The subsidiary's books and records incorrectly identified the two installment payments, which were made in 1996 and 1997. In 1997, Chiquita's internal audit staff discovered the payment during an audit review and, after an internal investigation, Chiquita took corrective action which included terminating the responsible Banadex employees and reinforcing internal controls at Banadex.

Civil Disposition:

Pursuant to a settlement agreement with the SEC, Chiquita was ordered to cease-and-desist from future violations of these provisions of the FCPA and to pay a \$100,000 civil penalty.

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**106. Owl Securities and Investment Ltd.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Richard K. Halford (W.D. Mo., August 3, 2001)**
- B. United States v. Albert Reitz (W.D. Mo., August 3, 2001)**
- C. United States v. Robert Richard King, et al. (W.D. Mo., June 27, 2001)**

Entities and Individuals:

- Owl Securities and Investment Ltd. (OSI Ltd.) (not charged).
- OSI Proyectos (not charged).
- Richard K. Halford, Part-Owner and CFO of OSI Ltd., charged August 3, 2001.
- Albert Reitz, Vice President and Secretary of OSI Ltd., charged August 3, 2001.
- Robert Richard King, Part-Owner of OSI Ltd., indicted June 27, 2001.
- Pablo Barquero Hernandez, Costa Rican representative of OSI Ltd., indicted June 27, 2001.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (King and Hernandez)
- Commercial bribery (King and Hernandez)

Location and Time Period of Misconduct: Costa Rica, 1997-2000.

Summary:

In 2001, the Department of Justice filed charges against two executives and a part-owner of Owl Securities and Investment Ltd., a Missouri company, as well as an agent that represented the company and its wholly-owned Costa Rican subsidiary, OSI Proyectos. According to court documents, OSI Proyectos was engaged in the development of port facilities in Costa Rica, including an international airport and various luxury properties. In 1998, the ruling Costa Rican political party signed a letter agreeing to allow OSI and its subsidiary to move forward with developing the port facilities. However, before it granted formal permission, Pablo Barquero Hernandez, OSI's Costa Rican Representative indicated that OSI would be required to pay a final "closing cost" or "toll" of \$1 million. This amount was later increased to \$1.5 million. Together, Robert Richard King, a large shareholder in OSI, and Hernandez allegedly agreed

to pay the Costa Rican ruling party a \$1 million “closing cost” to secure the contract. For their roles in this bribery scheme, King and Hernandez were indicted by a federal grand jury in the Western District of Missouri on June 27, 2001.

Two additional OSI executives were charged on August 3, 2001, for their roles in the illicit payments to Costa Rican officials. According to court documents, Richard K. Halford, then the CFO of OSI, had communicated with Hernandez and was aware of the payments to Costa Rican officials. He proposed opening a new account in Panama or the U.S. to route the payments. Albert Reitz, OSI’s Vice President and Secretary, assisted in raising funds from investors to pay for the bribe.

*Criminal Disposition:*

Halford and Reitz each pleaded guilty on August 3, 2001. On July 9, 2002, District Judge Scott O. Wright sentenced Halford to five years’ probation and Reitz to five years’ probation, including 6 months of home confinement, and 100 hours of community service. King was convicted at trial in June 2002 and sentenced in November of that year to 30 months’ imprisonment, 2 years’ supervised release, and a \$60,000 fine. On December 15, 2003, the U.S. Court of Appeals for the 8<sup>th</sup> Circuit upheld King’s conviction. Hernandez is currently a fugitive.

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**107. Allied Products Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Daniel Ray Rothrock (W.D. Tex., June 13, 2001)**

*Entities and Individuals:*

- Daniel Ray Rothrock, Vice President of Allied Products Corporation’s Cooper Division, charged June 13, 2001.

*Criminal Charges:*

- Falsification of books and records

*Location and Time Period of Misconduct:* Russia, 1991-1993.

*Summary:*

On June 13, 2001, the Department of Justice charged Daniel Ray Rothrock, the Vice President of the Cooper Division of Allied Products Corporation (Allied), with one count of falsifying his employer’s corporate books and records, in violation of the FCPA. The Cooper Division of Allied, a Chicago, Illinois based company and U.S. issuer, was engaged in the business of manufacturing and selling workover rigs and other oilfield well servicing equipment to purchasers throughout the world. According to the one-count information filed against him, in August 1991, the Cooper Division of Allied agreed to pay a sales commission of \$282,076 to a third-party company for the ultimate benefit of the Director General of RVO Zarubezhneftstroy (“Nestro”), a Soviet government purchasing agency, in order to obtain a contract for the sale of 20 workover rigs to Nestro.

In September 1992, this third-party company, of which the Russian official was a director, requested \$300,000 from Allied’s Cooper Division, purportedly for services provided by the company in connection with the award of the workover rig contract. Subsequently, in late 1992, Rothrock created a falsified invoice for the consulting company, in the amount of \$300,000, which purported to be for a “consultation fee and market study”. Rothrock later admitted that he knew that no consultation fee or market study had been or would be provided by the third-party company and that, in fact, the invoice he provided was for the purpose of disbursing these illicit funds to the company. In October 1992, Rothrock received an invoice for \$300,000, similar to the one he had drafted for the third-party company, which purported to come from a company called “Educa” in Vienna, Austria. Following the signing of a second

contract with Nestro for the provision of additional workover rigs in 1993, Rothrock caused the Cooper Division to issue a check to Educa in the amount of \$300,000, despite knowing that Allied had no business relationship with a company called “Educa” and that the invoice was in fact from the third-party company. Rothrock thereby caused false entries regarding this illicit payment to be incorporated into the books and records of Allied.

*Criminal Disposition:*

Rothrock pleaded guilty before a U.S. Magistrate Judge on June 22, 2001. Rothrock’s guilty plea was accepted by U.S. District Judge Orlando L. Garcia on August 24, 2001, and he was sentenced to one years’ probation on September 20, 2001.

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**108. International Business Machines Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. International Business Machines Corporation (D.D.C., December 21, 2000)**
- B. In the Matter of International Business Machines Corporation (December 21, 2000)**

*Entities and Individuals:*

- International Business Machines Corporation, civil complaint filed December 21, 2000.

*Civil Charges:*

- Falsification of books and records

*Location and Time Period of Misconduct:* Argentina, 1994-1995.

*Summary:*

On December 21, 2000, the SEC filed two settled enforcement actions against International Business Machines Corporation (IBM), alleging that the company had violated the books and records provision of the FCPA in connection with a \$250 million contract to integrate and modernize the computer system of a commercial bank owned by the Argentine government. According to the SEC’s filings, certain former senior management of IBM-Argentina, S.A. (“IBM-Argentina”), a wholly-owned subsidiary of IBM, caused IBM-Argentina to enter into a subcontract with Capacitacion Y Computacion Rural, S.A. (“CCR”). Between 1994 and 1995, IBM-Argentina paid CCR approximately \$22 million under the subcontract. Of this amount, at least \$4.5 million was transferred to several directors of the state-owned Argentine bank by CCR.

In connection with the subcontract, IBM-Argentina’s former senior management overrode IBM procurement and contracting procedures, and hid the details of the subcontract from the technical and financial review personnel assigned to the contract with the Argentine state-owned bank. In order to override IBM’s procurement review procedures, the IBM-Argentina’s former senior management provided the company’s Procurement department with fabricated documentation, including a backdated authorization letter and a document that stated incomplete and inaccurate reasons for hiring CCR. IBM-Argentina subsequently recorded the payments to CCR in its books and records as third-party subcontractor expenses. While IBM did not falsify or destroy any records, in consolidating its subsidiaries’ financial results, this false information was incorporated into IBM’s 1994 Form 10-K, which was filed with the SEC on March 23, 1995.

After IBM officials learned about the misconduct by IBM-Argentina, the company took immediate corrective action, including terminating the employees involved and stopping all future payments to CCR.

*Civil Disposition:*

IBM was ordered to cease and desist from future violations and paid a \$300,000 civil penalty.

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**109. UNC/Lear Services Inc.**

**Resulting Criminal Enforcement Action(s):**

**A. United States v. UNC/Lear Services Inc. (W.D. Ky., February 17, 2000)**

**Entities and Individuals:**

- UNC/Lear Services Inc., charged February 17, 2000.

**Criminal Charges:**

- Falsification of books and records
- Mail fraud
- Making a false statement

**Location and Time Period of Misconduct:** Saudi Arabia, 1993-1995.

**Summary:**

On February 17, 2000, the Department of Justice charged UNC/Lear Services Inc. (UNC/Lear), a provider of military parts and services to foreign governments, with mail fraud, making false statements, and falsifying its books and records. The charges against UNC/Lear arose from the company's efforts to conceal \$140,000 in illicit payments, which were made to a Kentucky corporation for the benefit of a Saudi Arabian consultant. The payments were described in the company's books and records as "fees for engineering services," and the consultant provided UNC/Lear with false invoices to support the payments. UNC/Lear was also charged with making false statements to the U.S. Department of Defense by claiming that it had paid no foreign agents and no contingent fees on a sole source Financial Management Information System contract.

**Criminal Disposition:**

UNC/Lear pleaded guilty to all charges on March 6, 2000, and was sentenced to pay a \$75,000 criminal fine, a \$132,000 civil penalty, and \$768,000 in restitution.

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**110. Metcalf & Eddy International, Inc.**

**Resulting Civil/Administrative Enforcement Action(s):**

**A. United States v. Metcalf & Eddy International, Inc. (D. Mass., December 14, 1999)**

**Entities and Individuals:**

- Metcalf & Eddy International, Inc., charged December 14, 1999.

**Civil Charges:**

- Bribery of foreign officials

**Location and Time Period of Misconduct:** Egypt, 1994-1997.

**Summary:**

On December 14, 1999, the Department of Justice initiated a settled civil enforcement action against Metcalf & Eddy International, Inc. (M&E), in connection with the company's improper provision of things of value to Egyptian government officials, in violation of the FCPA. According to the Department's filings, during 1994, Metcalf & Eddy International, Inc. (M&E) was awarded a contract to provide services in support of the maintenance of wastewater treatment facilities managed by the

Alexandria General Organization for Sanitary Drainage (AGOSD), an Egyptian government agency that was responsible for wastewater and sewage treatment in Alexandria, Egypt. In 1995, M&E was awarded a second contract to provide architectural and engineering support to AGOSD's operations.

In 1994, M&E paid for the Chairman of the AGOSD to travel to Boston, Paris, and San Diego with his family, including cash "per diem" payments given to him in advance in Alexandria, Egypt. In exchange, the Chairman exerted influence over the board in charge of awarding these contracts and recommended that M&E be given \$36 million contracts, which were funded by the U.S. Agency for International Development.

Civil Disposition:

On December 14, 1999, without admitting or denying the Department's allegations, M&E consented to an injunction to pay a fine of \$400,000 and costs of investigation of \$50,000, and to be permanently enjoined from FCPA violations.

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## **111. International Materials Solutions Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. International Materials Solutions Corporation, et al. (S.D. Ohio, February 8, 1999)**

Entities and Individuals:

- International Materials Solutions Corporation (IMSC), charged February 8, 1999.
- Thomas K. Qualey, President of IMSC, charged February 8, 1999.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)

Location and Time Period of Misconduct: Brazil, 1995-1996.

Summary:

On February 8, 1999, the Department of Justice filed a two-count information in the Southern District of Ohio, charging International Materials Solutions Corporation (IMSC) and Thomas K. Qualey, IMSC's President, with one count of conspiring to violate the anti-bribery provisions of the FCPA and one count of bribing a foreign official. According to court documents, in 1995 and 1996, Qualey prepared and submitted bids on behalf of International Materials Solutions Corporation (IMSC) to sell forklifts to the Brazilian Air Force (BAF) and to service them. In order to secure these contracts, which were worth approximately \$400,000, IMSC agreed to pay \$67,000 in bribes to a Lieutenant Colonel in the BAF, who was stationed as a Foreign Liaison Officer in the United States.

Criminal Disposition:

On February 10, 1999, Qualey pleaded guilty and was sentenced to four months home confinement and a \$5,000 fine. IMSC also pleaded guilty on this date and was later sentenced to pay a \$1,000 criminal fine.

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**112. Control Systems Specialist, Inc.**

**Resulting Criminal Enforcement Action(s):**

**A. United States v. Control Systems Specialist, Inc., et al. (S.D. Ohio, August 19, 1998)**

**Entities and Individuals:**

- Control Systems Specialist, Inc.
- Darrold Richard Crites, President of Control Systems Specialist, Inc.

**Criminal Charges:**

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)
- Bribery of U.S. officials (all defendants)

**Location and Time Period of Misconduct: Brazil, 1994-1996.**

**Summary:**

On August 19, 1998, the Department of Justice filed a three-count information against Control Systems Specialist, Inc. (CSS) and its President, Darrold Richard Crites, charging both with conspiring to bribe foreign officials, as well as bribing both foreign and U.S. public officials. CSS, an Ohio corporation, was engaged in the business of buying and repairing surplus military equipment for resale. According to court documents, in 1994, CSS and Crites bid on a contract to supply refurbished military equipment to the Brazilian Aeronautical Commission. In order to win this contract, between November 1994 and December 1995, CSS and Crites made more than 21 bribe payments to a Brazilian Air Force Lt. Colonel, who was authorized to purchase military equipment on behalf of the Brazilian government. These bribe payments ultimately totaled more than \$250,000. In addition, CSS and Crites paid approximately \$66,000 to a U.S. Air Force officer to provide CSS with confidential information that helped the contracts with the Brazilian government. As a result of these bribe payments, CSS was awarded the contract with the Brazilian Air Force, which was ultimately worth more than \$670,000.

**Criminal Disposition:**

CSS and Crites each pleaded guilty before Judge Walter H. Rice on October 15, 1998, and were subsequently sentenced on March 8, 1999. Defendant Crites was sentenced to 3 years' probation, including 6 months' home confinement. CSS was fined \$1,500.

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**113. Saybolt Inc.**

**Resulting Criminal Enforcement Action(s):**

- A. United States v. Saybolt North America Inc., et al. (D. Mass., August 18, 1998)**  
**B. United States v. David H. Mead, et al. (D.N.J., April 17, 1998)**

**Entities and Individuals:**

- Saybolt Inc., charged August 18, 1998.
- Saybolt North America Inc., charged August 18, 1998.
- Frerik Pluimers, Chairman of the Board of Directors of Saybolt Inc., indicted April 17, 1998.
- David H. Mead, President of Saybolt Inc., indicted April 17, 1998.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to commit commercial bribery (Pluimers and Mead)
- Bribery of foreign officials (all defendants)
- Commercial bribery (Pluimers and Mead)

*Location and Time Period of Misconduct:* Panama, 1994-1995.

*Summary:*

In April 1998, a grand jury sitting in Trenton, New Jersey, returned an indictment charging Frerik Pluimers, a Dutch national, and David Mead, a British national, both of whom were officers of an American company, Saybolt Inc., with conspiracy and violations of the FCPA and the Travel Act in connection with a \$50,000 bribe paid to Panamanian officials. The bribe was paid to secure a lease for Saybolt Panama to move into the Panama canal free zone, which would reduce the company's tax liability. The bribe was discussed and approved at a board meeting of Saybolt Inc. in New Jersey, but the bribe itself was paid from the company's Dutch parent, Saybolt N.A., with the authorization of Pluimers.

*Criminal Disposition:*

On December 3, 1998, Saybolt Inc. and its subsidiary, Saybolt North America, pled guilty to violating the FCPA and paid a \$1.5 million fine. In a related case, Saybolt Inc. was sentenced to pay a \$3.4 million fine and required to retain a compliance monitor in relation to charges that it had falsified environmental tests of certain of its products.

Subsequent to the resolution, Saybolt sued its attorney, who had advised the company that the bribes could be paid through the Netherlands, for malpractice. The case was settled, but the settlement was never made public.

Mr. Mead was convicted at trial in October 1998 and sentenced to four months in prison and a \$20,000 fine. The United States requested that the Netherlands extradite Mr. Pluimers in March 2000. Despite extended litigation, including a decision of the Dutch Supreme Court authorizing the extradition, the Dutch authorities have refused and rejected the U.S. request for Mr. Pluimers' extradition. The United States is still seeking Mr. Pluimers return to the United States to stand trial.

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**114. Tanner Management Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Herbert K. Tannenbaum (S.D.N.Y., July 23, 1998)**

*Entities and Individuals:*

- Herbert K. Tannenbaum, President of Tanner Management Corporation, charged July 23, 1998.

*Criminal Charges:*

- Conspiracy to bribe foreign officials

*Location and Time Period of Misconduct:* Argentina, 1996-1998.

*Summary:*

On March 24, 1998, Herbert Tannenbaum was arrested pursuant to a criminal complaint filed in the Southern District of New York, which charged him with conspiracy to violate the anti-bribery provisions of the FCPA. A one-count information, charging Tannenbaum with conspiracy to violate the

FCPA, was subsequently filed on July 23, 1998. According to court documents, Tannenbaum, as President of Tanner Management Corporation, offered to make secret payments totaling 15% of the contract value to an undercover agent posing as a procurement officer of the Government of Argentina in order to induce the agent to purchase garbage incinerators. According to the plea agreement, the offered bribe totaled between \$120,000 and \$200,000. As part of the conspiracy and in an attempt to disguise the secret payment, Tannenbaum incorporated a fictitious entity named Cybernet USA and opened a bank account in the same name.

*Criminal Disposition:*

Tannenbaum pleaded guilty on August 5, 1998, and, pursuant to a plea agreement with the United States, was sentenced to a prison term of 1 year and 1 day, to be followed by 3 years of supervised release.

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