

I N S I D E T H E M I N D S

International White Collar Enforcement

*Leading Lawyers on Preventative Measures,
Regulatory Compliance, and Litigation*

2016 EDITION



ASPATORE

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As White Collar Enforcement
Changes with the Times,
So Must You

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Introduction: Anti-Bribery Enforcement—A Global Perspective

Geopolitical changes within and among countries have an impact and influence on how bribery and corruption are prosecuted around the world. It is imperative to keep a global eye on what other countries are doing to combat bribery and corruption if we are to understand the changes taking place in this area of the law.

This chapter will explore how countries, some of them highly corrupt, are taking on bribery and corruption through notable prosecutions and changes in their criminal laws. It discusses the implementation of new laws that address the human condition and protects the privacy of one's personal data. The chapter also provides guidance on what corporate clients need to be doing in their anti-bribery and corruption compliance efforts if they are to protect themselves from onerous criminal investigations and prosecutions.

The Petrobras (Petróleo Brasileiro SA) investigation in Brazil has received a great deal of global media attention. Petrobras is Brazil's national oil and gas company whose shares at one time were highly valued. Now, they are considered junk bonds, in large part because of the scathing accusations and convictions resulting from this immense bribery and corruption scandal that has been uncovered within Petrobras. The Petrobras investigation has had a rippling effect outside of Brazil's borders, touching virtually every company that had any contractual relationship with Petrobras. The corruption has permeated every level within Petrobras and infected virtually all third-party vendors and suppliers to Petrobras, as evidenced by the multiple prosecutions.

The people in Brazil most surely were not surprised about the existence of corruption within the levels of Petrobras. They were surprised, however, at the aggressive enforcement and stiff sentences coming out of the Petrobras prosecutions.

Brazil is ranked as “very corrupt” on the Corruption Perception Index (CPI) put out yearly by Transparency International (TI).¹ When the Petrobras case

¹ See <http://www.transparency.org/country>.

first surfaced, we in the criminal defense world wondered how quickly the Department of Justice (DOJ) would step in and start working hand-in-glove with the Brazilian prosecutors to bring related Foreign Corrupt Practices Act (FCPA)² prosecutions in the United States. The DOJ has acknowledged it is exchanging information with the Brazilian prosecutors. The Brazilian prosecutor arrested the head of Odebrecht in Brazil for his alleged acts of bribery and corruption related to Odebrecht's contracts with Petrobras. Time will tell whether the United States finds its own way to bring additional FCPA prosecutions emanating from the Petrobras scandal. Odebrecht has construction contracts in the United States, so, it is understandable that the DOJ has taken a keen interest in what happens to Odebrecht in Brazil.

On February 10, 2016, SBM Offshore confirmed that the DOJ had re-opened its investigation into SBM's alleged acts of bribery of government officials in Angola, Brazil, and Equatorial Guinea between 2007 and 2011. According to SBM, the DOJ has made information requests in connection with its re-opened probe. The company said it has reserved \$245 million to cover "possible settlement" with Brazil authorities. Brazil prosecutors allege that several companies, including SBM Offshore, participated in a price fixing, bribery, and kickbacks scheme tied to Petrobras contracts.

In April 2012, Russia joined the Organisation for Economic Cooperation and Development (OECD). This means that Russia is agreeing to embrace the OECD Convention and its principles, including enforcing its own anti-bribery laws. The criminalization of bribery of foreign public officials is led by the OECD's Working Group on Bribery in International Business Transactions.³ Considering Russia's CPI score was 133 in 2012 and 119 in 2015,⁴ it faces many challenges if it expects to live up to the OECD Convention's anti-bribery enforcement expectations. By joining the OECD, Russia opened itself up to the OECD Working Group's scrutiny in this

² Foreign Corrupt Practices Act, Pub. L. No. 95-213, 91 Stat. 1494.

³ Organization for Economic Co-Operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, December 17, 1997, 37 I.L.M.I., available at http://www.oecd.org/document/32/0,3343,en_2a49_34859_2048160_1_1_1_3744,00.html.

⁴ The Corruption Perception Index (CPI) measures the perceived levels of public sector corruption in 168 countries. In 2012, TI ranked 176 countries. In 2015, TI ranked 168 countries. The higher the score, the more corrupt a country has been found to be.

area. It will be interesting to see whether its CPI score improves over the years as a result of Russia's OECD membership.

China has not done much to improve its CPI ranking over the years,⁵ despite its aggressive anti-bribery prosecutions of Chinese nationals. Punishment for bribery can include ejection from the Communist party, a death sentence, long prison terms, and confiscation of personal assets. Progress is being made in China in other areas of criminal law enforcement. On December 11, 2015, China's Anti-Money Laundering Monitoring and Analysis Center signed a memorandum of understanding with the United States to create a framework to facilitate and expand US-China collaboration, communication, and cooperation on financial intelligence.⁶ Perhaps such collaboration may one day spill over into the FCPA, since to date, the DOJ has received little cooperation from China and its enforcement officials in its FCPA investigations.

In May 2015, the president of Mexico signed legislation amending Mexico's Constitution. The amendment created a comprehensive national anti-corruption system to tackle bribery issues. How effective Mexico's enforcement of this new legislation will become is yet to be seen.⁷

India passed the Lokpal Act⁸ in response to its anti-corruption movement, which started in 2011. Activist Anna Hazare, known for her non-violent protests, led the charge, demanding reforms in anti-bribery and corruption. Her actions helped create a new Indian enforcement agency that investigates corrupt officials. However, India's parliament did not pass the bill that would

⁵ China ranks 83/168 in 2015 by TI.

⁶ Press Release, *Department of the Treasury Financial Crimes Enforcement Network, FinCEN and China's CAMLMAC Sign Memorandum of Understanding* (Dec. 11, 2015), available at <https://www.fincen.gov/whatsnew/pdf/20151211.pdf>.

⁷ *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de combate a la corrupción*, *Diario Oficial de la Federación [DOF]* 27-05-2015 (Mex.), available at http://dof.gob.mx/nota_detalle.php?codigo=5394003&fecha=27/05/2015.

⁸ Lokpal and Lokayuktas Act, 2013, Act No. 1 of 2014, §§ 1 *et seq.*, available at <http://www.indiacode.nic.in/acts2014/1%20of%202014.pdf>.

have created a foreign bribery prohibition similar to the FCPA. Nevertheless, the Lokpal Act is a positive anti-corruption move for India.⁹

In October 2015, the Supreme Court of Argentina created a special group composed of ten experts. The group supports the judiciary when it prosecutes cases that deal with corruption. This group is composed of attorneys, accountants, and engineers who answer directly to the Supreme Court. The group exists to help provide guidance to the Argentine Supreme Court when it handles anti-bribery cases that may have impact in the legal, accounting, and engineering areas.¹⁰

In March 2015, the president of Chile made some new rules that require federal and local public officials to release their financial information for the past two years, prior to the year they decide to enter into government service. This rule is designed to achieve more transparency by Chile's governing officials.

Last year, the United Kingdom passed a new law focused on improving the human condition in the workplace. It is called the UK Modern Slavery Act of 2015.¹¹ It took effect in October 2015. Marilyn Croser, director of CORE, the UK coalition on corporate accountability, stated, "The use of slave labour in U.K. supply chains must be stamped out. As well as greater vigilance among business, criminal prosecutions are needed to prevent and punish such abuses, and we welcome efforts by U.K. police to prosecute traffickers in the U.K."¹²

This law covers commercial organizations whose annual turnover and that of their subsidiaries is £36 million or more. The commercial organization must carry on a business or part of a business in the United Kingdom. This

⁹ See Lokpal and Lokayuktas Act, 2013, Act No. 1 of 2014, §§ 1 *et seq.*, India Code (2014), available at <http://www.indiacode.nic.in/acts2014/1%20of%202014.pdf>.

¹⁰ *Acordada 34/2014, Crear el Cuerpo de Peritos del Poder Judicial de la Nación, Especializado en Casos de Corrupción y Delitos contra la Administración Pública y aprobar su reglamento*, (Oct. 21, 2014) available at <http://www.csjn.gov.ar/docus/documentos/verdoc.jsp>.

¹¹ Modern Slavery Act 2015, c. 30, §§ 1 *et seq.* (UK).

¹² *Welcome jail sentence for first modern slavery offences*, available at <https://www.leighday.co.uk/News/News-2016/February-2016/Welcome-jail-sentence-for-first-modern-slavery-off>.

legislation means such organizations will have to produce a slavery and human trafficking statement for each financial year. This annual report must set out the steps taken to ensure slavery and trafficking are not taking place, either within the organization or in any part of its supply chain. The report must include information on policies, training, due diligence, and the effectiveness of the measures being taken by the organization to combat modern slavery.

The US Securities and Exchange Commission (SEC) was required to adopt a resource extraction issuer disclosure rule pursuant to Section 13(q) of the Exchange Act of 1934,¹³ which was added to the Exchange Act by Section 1504 of the Dodd-Frank Act.¹⁴ The SEC proposed a rule in August 2012, but it was challenged in court and then vacated by the US District Court for the District of Columbia in July 2013.¹⁵ So its proposed rule that came out in December 2015 is the SEC's second chance at extraction disclosure requirements.

When the 2012 rule was adopted, it was the first of its kind. Following this proposed rule came two European Union directives that contained similar payment disclosure requirements. They are the EU Accounting Directive and the EU Transparency Directive. In 2015, Canada's Extractive Sector Transparency Measures Act¹⁶ also took effect.

We all know that fraud and corruption breed poverty, and poverty impacts negatively the human condition. These new laws and rules being implemented around the world will hopefully begin to reduce bribery and corruption in international business transactions and improve the human condition, provided they are vigorously and fairly enforced.

¹³ 15 U.S.C.A. § 78m(q).

¹⁴ Pub. L. No. 111-203, § 1504, 124 Stat. 1376, 2220-22; Disclosure of Payments by Resource Extraction Issuers, 80 Fed. Reg. 80057 (proposed December 23, 2015) (to be codified at 17 C.F.R. pts. 240 and 240b); available at https://www.gpo.gov/fdsys/pkg/FR-2015-12-23/pdf/2015_31702.pdf.

¹⁵ *National Ass'n of Mfrs. v. SEC*, 956 F. Supp. 2d 43 (D.D.C. 2013), *aff'd in part, rev'd in part and remanded*, 748 F.3d 359 (D.C. Cir. 2014) (*overruled by American Meat Institute v. US Dept. of Agriculture*, 760 F.3d 18 (D.C. Cir. 2014)) and *adhered to on reh'g*, 800 F.3d 518 (D.C. Cir. 2015).

¹⁶ Extractive Sector Transparency Measures Act, S.C. 2014, Ch. 39, Sec. 376 (Can.); Extractive Sector Transparency Measures Act, S.C. 2014, Ch. 39, Sec. 376 (Can.); available at <http://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html>.

The Kleptocracy Asset Recovery Initiative¹⁷ is an interesting US law that has found a resurgence in the United States' battle against corruption and money laundering. The United States sent a warning message to political leaders and foreign officials around the world when it announced it would not be the repository for their illicit proceeds and assets purchased with such proceeds. If the DOJ has reason to believe that dirty money has been laundered in the United States through the purchase of US assets, the DOJ can bring a civil case to seize those assets. In some of these cases, the DOJ has traced the flow of these illicit funds and seized homes, cars, and bank accounts of corrupt foreign officials and their family members. While the DOJ may not be able to file an FCPA charge against these foreign officials for their acceptance of bribes because the FCPA does not apply to foreign officials who receive the bribes, it can initiate civil proceedings against them and seize their assets that they purchased with illegal proceeds.

Other types of white collar crimes have grabbed the headlines over the past few years. Switzerland has aggressively assisted the Internal Revenue Service (IRS) in identifying US tax evaders who secreted their income in secret Swiss bank accounts to avoid paying US taxes. Our government has aggressively prosecuted many of these Swiss banks for their complicity in this US tax evasion. More than eighty Swiss banks have settled tax cheating cases with the DOJ under a special program. The banks together have paid \$1.36 billion for the settlements. In 2014, Credit Suisse paid \$2.6 billion to settle its criminal charges, where it was accused of conspiring to help US tax payers cheat on their taxes. USB AG paid \$780 million in 2009 in its criminal US tax settlement for similar types of crimes.

We also have the resurgence of monetary sanctions levied by the US Treasury's Office of Foreign Assets Controls (OFAC). According to OFAC, these enforcement actions highlight the importance for institutions with operations abroad, where there is the presence of individuals and

¹⁷ Press Release, Department of Justice, *Attorney General Holder at the African Union Summit* (July 25, 2010), available at <http://www.justice.gov/opa/speech/attorney-general-holder-african-union-summit>; Press Release, Department of Justice, *Assistant Attorney General Lanny A. Breuer Delivers Keynote Address at Money Laundering Enforcement Conference* (Oct. 19, 2010), available at <http://www.justice.gov/opa/speech/assistant-attorney-general-lanny-breuer-delivers-keynote-address-money-laundering>.

entities on the Specified Designated Nationals list (SDN), to make certain that they act appropriately to ensure compliance with the economic sanctions laws of the United States. On February 8, 2016, OFAC fined Barclay's Bank PLC \$2.48 million to resolve potential civil liability for 159 alleged violations of the Zimbabwe sanctions regulations. From July 2008 to September 2013, OFAC alleged Barclay's processed 159 banned transactions worth about \$3.4 million through financial institutions in the United States, including Barclay's New York branch. As the world and countries' alliances change, sanctions enforcement becomes a more significant player in the white collar arena. Iran, Cuba, and Venezuela are perfect examples. That is why keeping abreast of geopolitical changes is imperative in the international world of white collar crime.

Challenges in Investigating International White Collar Crimes

Some of the challenges facing white collar law enforcement agencies include untraceable e-currency, such as Bitcoins, encryption applications on cell phones that prevent the tracing of calls and text messages once they are sent, tax havens with strict bank secrecy laws, and a lack of anti-bribery enforcement due to corrupt governments and judiciaries.

Data privacy is another concern. Restrictions against accessing and transporting protected data across country borders complicate global investigations, both for government and for criminal defense counsel. We had an FCPA investigation that involved Russia, where the company's server was in Poland. Poland is a member of the European Union (EU), and bound by strict data privacy laws. Russia is not. The question became how we could access certain employees' computers in Poland, where no employee consents were in place giving us such permission. Our investigation was delayed for several weeks until we could obtain the employees' consent to access their computers.

Under its 2016 action plan, the EU data protection authorities have established specific steps they hope to take before the spring of 2018, when they will strengthen the European Union's data protection regime.¹⁸ In December 2015,

¹⁸ European Commission Article 29 Data Protection Working Party, Statement on the 2016 action plan for the implementation of the General Data Protection Regulation

the European Commission, Parliament, and Council reached an agreement that will replace the EU bloc's data protection directive enacted back in 1995.¹⁹ This new uniform regulation makes stricter the rules that govern the use and flow of data. Multinationals can face fines for violations of these rules of up to four percent (4%) of their global annual revenue.

E-currency, data privacy, and encryption devices are just a few examples of the interviewing forces that make the perfect storm to impede an effective prosecution and defense of white collar crimes.

Structure and Economics

Delays in bringing a case to court, not to mention facing a corrupt judiciary when you get there, discourage both civil and criminal enforcement. When a civil case filed in Brazil, for example, can take years to get to trial, litigants are dissuaded from seeking justice within the Brazilian courts. When a country is ranked by TI as highly corrupt or is suffering through hyperinflation, where the streets breed violence because of a scarcity of goods, when it is next to impossible to do business without paying bribes at every level, companies withdraw from such markets or sometimes decide not to enter those markets at all. Other companies firmly commit to compliance expenditures in an attempt to address these issues up front in an effort to gain a market share in a high-risk, emerging market.

Treaties and Conventions

Treaties, conventions, and agreements enable US law enforcement agencies to conduct cross-border investigations and obtain third-party records and testimony. The DOJ has Mutual Legal Assistance Treaties with fifty-seven countries. These treaties provide for the exchange of information with their counterparts abroad.²⁰ The SEC has entered into various types of agreements and memoranda of understanding with countries that enable

(GDPR) (Feb. 2, 2016), available at http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2016/wp236_en.pdf.

¹⁹ European Council Press Release 951/15, *EU data protection reform: Council confirms agreement with the European Parliament* (Dec. 18, 2015), available at <http://www.consilium.europa.eu/en/press/press-releases/2015/12/18-data-protection/>.

²⁰ <https://mlat.info>.

them to do likewise.²¹ The United States has 113 extradition treaties with other countries that provide, under specified conditions, for the return of individuals to the prosecuting signatory country for investigation, trial, and sentencing.²² The prosecutions under way in the Eastern District of New York against thirty-nine individuals charged as part of the DOJ's and SEC's investigation into corruption in the Federal Internationale de Football Association (FIFA) has evidenced the use of extradition treaties to bring these defendants to the United States for trial.

Role of International Trade Organizations in Fighting Corruption

International trade organizations can positively contribute to helping their industry members fight corruption. One such organization is the Global Technology Distribution Council (GTDC). The GTDC represents more than \$11.3 billion in assets among its members who distribute technology throughout the world. Their collective supply chain consists of hundreds of thousands of vendors, suppliers, and distributors. This industry came together in response to complaints from its supply chain members who were being asked to undergo anti-bribery and corruption due diligence checks hundreds of times a year. The due diligence process was necessary, but very inefficient. GTDC heard the call of its members and set out to create a due diligence template accessible to its members online. The participating entities in the supply chain complete a due diligence questionnaire online one time and keep it updated. Members can then access this information database as needed. So instead of filling out due diligence questionnaires hundreds of times in the course of a year, a vendor, supplier, or distributor does it once and then grants access to its information and background to the membership through this online database. GTDC also provides online and in-person FCPA training and due diligence checklist templates and requires of its members compliance with its FCPA/anti-corruption laws. (*See* Appendix A for a sample checklist.)

This is an example of an industry coming together to respond efficiently and effectively to its anti-bribery compliance obligations for its supply chain members.

²¹ <https://www.dodmou.com>.

²² <http://www.state.gov/s/l/treaty/faqs/70138.htm>; 18 U.S.C.A. § 5181.

Common White Collar Crimes

Anti-money laundering has a global appeal, especially when money laundering feeds the coffers of terrorist organizations. Illegal proceeds must be cleaned, invested, and put to work again. If you cannot always prevent the crimes that generate the illegal proceeds, at least you can try to grab the assets purchased with them. Enter the fraud, money laundering, and drug task forces. These task forces are composed of agents from the IRS, US Immigration and Customs Enforcement (ICE), US Customs and Border Protection (CBP), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Secret Service, and the US Postal Inspection Service.

The FBI focuses on business fraud, anti-trust, money laundering, cybercrime, terrorism, and terrorist financing. In the old days, the Secret Service just handled counterfeit money investigations and provided security for top US government officials. Now, it is heavily involved with credit card fraud and cybercrimes. The DEA remains focused on drug trafficking and money laundering. The IRS is now playing a significant role on these task forces as it investigates and prosecutes tax crimes, money laundering, and asset seizure.

The IRS has also taken an aggressive posture in going after foreign banks that conspire with US taxpayers to evade paying their US taxes. Under the US Foreign Account Tax Compliance Act,²³ the law calls on overseas financial institutions to tell the IRS about their United States-owned accounts or face a possible 30 percent withholding tax on their United States-sourced income.

Safer Approaches to International Business

In representing multinationals who do business around the world, you should understand that FCPA compliance is one of their most important concerns. In the area of FCPA, you must emphasize education, training, compliance monitoring, audits, and enforcement.

²³ Foreign Account Tax Compliance Act, Pub. L. No. 111-147, 124 Stat. 71, Title V (codified as amended in scattered sections of 26 U.S.C.A §§ 1471 *et seq.*), available at <https://www.gpo.gov/fdsys/pkg/PLAW-111publ147/pdf/PLAW-111publ147.pdf#page=27>.

FCPA compliance must be embraced from the top down, from the boardroom down to the loading dock. A company's FCPA compliance program and business code of ethics can be its life ring in this sea of increased global anti-bribery prosecutions. One of the most important things a company engaging in business abroad and moving its products across borders can do is first to evaluate its risks for bribery and corruption. A company must assess when and where it will encounter foreign officials and then, after assessing its risk, formulate anti-bribery policies and procedures that can be implemented by its personnel.

When developing a global compliance policy, it is important to understand that the policy may need to be modified to accommodate local anti-bribery laws.

Educate your client's sales and marketing, distribution, accounting, compliance, and legal personnel. Train them with real-life examples pertinent to their business in a language they can understand. Legalese will not work. Empower company managers to take ownership of the training and compliance for their respective departments. Reward those who are compliant, and discipline those who are not. As an outside lawyer, take the time to learn your client's business so the advice you give has practical meaning and is capable of implementation in the real world.

Monitor compliance. A policy is no good if your client has no sense as to how well it is working. If there are problems or hiccups along the way, then adjust the policies and procedures to address them. Make sure your client's compliance policy remains a working, breathing instrument.

A real challenge in anti-corruption and anti-bribery work is understanding the laws in the countries where your client operates. It is not enough to know what the FCPA says; you also have to know the anti-bribery laws in the foreign jurisdictions where your client does business. These local laws may be stricter than the FCPA. For example, the FCPA allows for facilitation payments. In most other countries, such payments are prohibited and considered bribes. In my firm, our FCPA team members throughout the world are knowledgeable on the laws of the foreign jurisdictions where they practice. We are often asked by companies to develop training materials, policies, procedures, and internal controls that encompass the local anti-

bribery laws of the countries where they do business. The focus on anti-bribery compliance must be broader than the FCPA; it must address the non-US jurisdictions' anti-bribery laws as well.

One of the highest-risk areas with the FCPA involves your client's relationships with third parties. Third-party risk issues accounted for about 70 percent of the FCPA cases that the SEC brought in 2014 and it is estimated by some sources as high as 90% of the FCPA cases brought by the DOJ in the past few years. There are ways to reduce risks when dealing with third parties. A company must perform due diligence on them and conduct background checks (or hire a third-party vendor to handle these). When outside counsel writes their contracts, they need to contain appropriate anti-corruption representations and warranties. As outside counsel, you should assist your clients in developing due diligence checklists for the sales and marketing people who will be interviewing and contracting with these third parties. If your client gets into trouble due to the actions of one of its third-party contractors, your client will need to be able to show the DOJ and the SEC what pre-engagement due diligence, contract protections, and performance monitoring it completed regarding its third-party contractors.

Staying on the right side of compliance, however, is not always easy.

If your client is committed to not paying bribes, it needs the support of its board, the chief executive officer (CEO), the president, and management. The company must be prepared to encounter delays in what it might want to do if it is not willing to bribe to get things done. I had a client who wanted to build a manufacturing plant in China. The client refused to pay a bribe to the government official who issued the building permits. After eighteen months of delay, repeated requests for a bribe, and repeated refusals to pay the bribes, the foreign government official finally gave up and granted the client its permits. How many companies are willing to wait eighteen months? Just remember, while delays no doubt will cost your client a great deal of money, the amount will be miniscule when compared to the money the client will pay to the DOJ and the SEC if it ends up being prosecuted for FCPA violations.

As an FCPA lawyer, you need to be able to provide your clients with pragmatic advice. No general counsel, head of compliance, or marketing person at any multinational company wants outside counsel telling them what they cannot do. You would not have the client for very long. This is the challenge we face in this area of anti-bribery compliance. You have to know and understand the FCPA thoroughly. You have to work with the client to help it minimize its risk in a way that can be practically applied. As lawyers, we are obligated to provide good legal advice and then work with our clients to help them best implement that advice in the real world.

What to Do When Faced with an Investigation

Informants, disgruntled employees who may have been fired, whistleblowers, and competitors can trigger criminal investigations by government enforcement agencies. Once an investigation is under way, your client may receive a summons for records from a state, federal, or regulatory enforcement agency or a grand jury subpoena from the DOJ, or, in a worst-case scenario, find a group of federal agents at its door with a search warrant for the premises. At this time, the client needs to consider engaging independent outside criminal defense counsel knowledgeable in the appropriate area of white collar law. The outside counsel will usually want to open communications with the prosecutor to find out the company's prosecutorial status. Is it a target, or a subject of the investigation? A target is an entity or individual the DOJ intends to prosecute; a subject is one the DOJ has yet to decide as to whether it should prosecute.

Next, the company will want to initiate its own parallel investigation. Your client may later decide to disclose voluntarily any wrongdoings it uncovers to the DOJ or SEC as a way to mitigate any potential prosecution or penalties. As defense counsel, you will want to work toward a deferred prosecution or non-prosecution agreement for your client. Then again, your client may decide to defend itself at a trial. These decisions are fact-specific and heavily influenced by the company's level of risk tolerance and the strength of the government's case.

For companies involved in an internal investigation and contemplating cooperation with the DOJ, the Yates Memo²⁴ has made one thing abundantly clear: companies will receive no credit for cooperation unless they are willing to release all the facts uncovered in the course of their investigation to the government regarding the identity of the wrongdoers within the company, regardless of their status in the company. Whether that person is in the C-suite or working in the warehouse, the company must be ready to disclose that information to the DOJ if it expects to receive any cooperation credit. (*See* Appendix B for a copy of the Yates Memo.)

Staying Informed

To keep on top of the developments in this area of white collar criminal law, you need to read and then read some more. Blogs, LAW360, LEXOLOGY, the DOJ and SEC websites, treatises, articles, whatever you can get your hands on to broaden your horizons in this field should be read.

Experience, of course, is the best teacher, but reading prepares you for action.

Keep up-to-date on industry trends and political issues abroad. Broaden your horizons and learn how global events can impact your clients' businesses. Read international journals and articles. Keep an eye on what other countries are doing in the areas of enforcement—tax, environmental, anti-trust, or money laundering.

I recently led a team of Squire associates and partners in writing a book for the Practising Law Institute (PLI) titled GLOBAL BUSINESS FRAUD AND THE LAW: PREVENTING AND REMEDYING FRAUD AND CORRUPTION. We discuss in our book that business fraud is global and thus requires practitioners in the field to broaden their horizons. Business fraud is multi-disciplinary and so must you be as a practitioner.

²⁴ Memorandum from Deputy Attorney General Sally Quillian Yates on Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), available at <http://www.justice.gov/dag/file/769036/download>.

My FCPA teams comprise corporate, labor and employment, commercial, regulatory, and criminal lawyers. Our FCPA team members must also be prepared to opine on the anti-bribery and anti-corruption laws of the United States and the foreign jurisdictions where they practice. If you are lucky, those lawyers are from your own law firm or respected colleagues from other firms you can engage to work with you.

Conclusion

The Foreword to the DOJ's and SEC's Resource Guide²⁵ succinctly proclaims the American government's interest in preventing international corruption as follows:

Corruption has corrosive effects on democratic institutions undermining public accountability and diverting public resources from important priorities such as health, education, and infrastructure. When business is won or lost based on how much a company is willing to pay in bribes rather than on the quality of its products and services, law-abiding companies are placed at a competitive disadvantage—and consumers lose.²⁶

²⁵ A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT, CRIMINAL DIVISION OF THE U.S. DEPARTMENT OF JUSTICE AND ENFORCEMENT DIVISION OF THE U.S. SECURITIES AND EXCHANGE COMMISSION (Nov. 14, 2012).

²⁶ A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT, CRIMINAL DIVISION OF THE U.S. DEPARTMENT OF JUSTICE AND ENFORCEMENT DIVISION OF THE U.S. SECURITIES AND EXCHANGE COMMISSION (Nov. 14, 2012) [hereinafter "FCPA Guide"]. The publication is available to the public free of charge online at www.justice.gov/criminal/fraudgcpa/guidance/guide.pdf and www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf. The DOJ and the SEC collaborated in the FCPA Guide's production to provide hypotheticals that interpret the various provisions of the statute. The DOJ has commented that it expects companies to train their personnel using the FCPA Guide and its explanations, interpretations, and hypothetical examples. Other excellent resources to learn more about the FCPA can be found at the section of DOJ's website dedicated to the FCPA and its enforcement, available at www.justice.gov/criminal/fraud/fcpa. It provides the FCPA in numerous languages, relevant history, and selected documents from various prosecutions and resolutions since 1977. There are Deferred and Non-Prosecution Agreements (DPAs, NPAs), plea agreements, indictments, information, and relevant court documents and pleadings. *See also* DOJ Opinion Releases issued in response to specific requests by issuers and domestic concerns pursuant to the DOD's Opinion Release Procedure, which can be found at www.justice.gov/criminal/fraudfcpa/docs/frgnrcrpt.pdf. If you are not familiar with what an Opinion Release is or the

As a wider array of white collar criminal statutes find their way into FCPA investigations and prosecutions, law enforcement agencies within the United States are combining into joint task forces and collaborating with foreign law enforcement agencies and prosecutors, using memoranda of understanding (MOUs), mutual legal assistance treaties (MLATs), and anti-bribery conventions to assist them. Lawyers defending in this area of the law must rise to this global law enforcement challenge. We must become more knowledgeable on a wider variety of related laws and topics, be more cognizant of geopolitical events and their impact on countries and their economics and social structures, and remain flexible in our advice to our clients, while being more creative in our defenses. Only in this way will we be able to adapt and provide truly valuable advice to our clients as they face the challenges of operating in a complex, global economy.

Key Takeaways

- Be sure the FCPA and all compliance is embraced and supported from the boardroom down to the shipping department.
- One of the most important things that a company engaging in business abroad and moving products across borders can do first is to evaluate its bribery and corruption risks. A company should first assess when and where it will encounter foreign officials and then develop appropriate policies and procedures to address those risks.
- When developing a company's compliance policies, understand that one compliance policy may not necessarily work for the whole world. Adapt compliance policies to meet the client's requirements; tailor them so they are practical in their application; and be sure to include compliance with the comparable laws in the foreign jurisdictions where the company does business.
- Educate your client's employees about the law and the consequences for non-compliance. Reward employees who perform well in their compliance duties, and discipline those who do not.
- To reduce the risks created by working with third parties in international business, perform due diligence and background checks on them. Build anti-bribery compliance representations and warranties

legal protection it can provide to the requesting entity, the FCPA Guide devotes an entire section on it in Chapter 9. The DOJ Opinion Release Procedure is outlined briefly below.

into their contracts. Provide them copies, in their native language, of your client's FCPA policy and business code of conduct. Require them to execute compliance certifications on a periodic basis as a condition of doing business with your company.

- As a lawyer, keep yourself up-to-date on world events, international changes in criminal laws, and geopolitical changes that can and will affect your practice and your client's operations abroad.

Related Resources

- Appendix C: Comparison of the FCPA Anti-Bribery Provisions with the UK Bribery Act and Russian Anti-Bribery Provisions
- Appendix D: Survey of Anti-Corruption Laws in Latin America

Rebekah J. Poston is a partner with Squire Patton Boggs (US) LLP and head of the firm's Anticorruption Compliance & FCPA Practice Group. After serving as an Assistant US Attorney with the US Attorney's Office in Miami, Florida, and a Special Attorney with the Department of Justice's Organized Crime and Racketeering Section in Cleveland, Ohio, Ms. Poston now focuses her practice on defending multinational corporations in complex domestic and international white collar criminal cases, and FCPA compliance.

APPENDIX A

THIRD-PARTY DUE DILIGENCE FCPA CHECKLIST

- The following is a checklist of inquiries that should be covered in a due diligence report on *distributors and agents providing revenue to _____ as well as any other **[third party that is reasonably likely to interact with foreign officials on _____’s behalf] (each an “**FCPA Third Party**”). The completed items should be described and attached to this checklist then provided to _____.
- The FCPA Third Parties Report Checklist (“Checklist”) for new and existing FCPA Third Parties shall be undertaken for all FCPA Third Parties and at the intervals specified below unless the _____ authorizes an exemption.

Highly Corrupt: FCPA Third Parties reasonably likely to interact with foreign officials on behalf of _____ in countries perceived as highly corrupt, as determined by their CPI score (i.e., lower than 4), shall be reviewed on a priority basis and always subject to review when negotiating a new or renewing an existing contract.

More Corrupt: FCPA Third Parties reasonably likely to interact with foreign officials on behalf of _____ in countries perceived as more (but not highly) corrupt, as determined by their CPI score (i.e., ranging between 4 and 7), shall be reviewed after those in highly corrupt countries unless the FCPA Third Parties in more corrupt countries are negotiating a new or renewing an existing contract with _____, in which case they are afforded equal Checklist review priority as FCPA Third Parties in highly corrupt countries.

Less Corrupt: FCPA Third Parties reasonably likely to interact with foreign officials on behalf of _____ in countries perceived as less corrupt based on the CPI score (i.e., greater than 7) shall only be subject to Checklist review when negotiating a new contract or when renewing an existing contract with _____.

No.	Task	Completed
1.	Need for the Representative: Explain why the services of a particular representative are appropriate and identify the qualifications of the representative.	_____
2.	General Background: Broadly describe the representative's primary areas of business activity.	_____
3.	Experience: Identify the number of years the representative has been in business, and, specifically, the number of years the representative has been involved in the particular type of business he or she will be performing under the proposed agreement with _____.	_____
4.	Quantity of Work to be Performed: If practical, estimate the percentage of time of the representative's business that will be devoted to _____ business under the proposed agreement and the time period in which the services are to be provided.	_____
5.	Individuals: Obtain the names and titles of those individuals who will be responsible for working for _____.	_____
6.	Location: Identify the anticipated country(ies) or territory(ies) where the work	_____

	will be performed under the proposed agreement with _____.	
7.	References: Obtain a list of business references. Contact the references with regard to their experience with the proposed representative including the credibility and capability to carry out the proposed representation and summarize the information obtained through them.	_____
8.	Embassy Check: Obtain information about the representative from the local U.S. embassy. The appropriate country desk officer may know the reputation of the representative and whether the representative has engaged in any improper conduct. Request commercial service reports from the embassy regarding the proposed representative and, if those are available, reference them in the report.	_____
9.	Financial Stability: If readily available, obtain financial statements of the representative (audited, if available) for the past three years, including balance sheets and profit and loss statements.	_____
10.	Representative Anti-Corruption Aptitude: (a) Determine if the representative has an anti-corruption program; (b) Determine if the representative	_____

	<p>has the ability to detect/investigate corrupt activity; (c) Determine if the representative periodically tests for corrupt activity; (d) Determine if the representative detects corrupt activity, the representative investigates such activity; (e) Determine whether there are any employees or officers of the representatives also officials or employees of a foreign government for purposes of the FCPA; (f) Determine if the representative uses or has used “grease” or “facilitation” payments in order to obtain a routine government service; and (g) Determine if the representative provides or has the representative provided entertainment or travel to foreign officials, as defined under the FCPA? If the representative responds affirmatively to any of the above questions (i.e, letters a – g), require the representative to fully describe the basis for such a response.</p>	
11.	<p>Compliance Verification: State whether or not the appropriate _____ personnel have reviewed and discussed the provisions of the FCPA with the representative and provided the representative with _____’s FCPA Policy and related</p>	_____

	representative FCPA memo and certification.	
12.	Representative's Cooperation: Indicate whether or not the representative has objected to any of the representations contained in the proposed representative agreement or to any questions pertaining to its background.	_____
	<p>Items 13 and 14 must be completed under the following circumstances:</p> <p>a) When the FCPA Third Party is located in a country known as a high risk region (e.g., some countries located in the Middle East, Asia and former Soviet Union) or is expected to conduct business on _____'s behalf in any of those regions. Contact the _____ if you are unsure if the country falls within this category.</p>	_____
13.	Ownership Structure: If possible, identify relative percentages of ownership of each of the principals of the representative. Ask whether any current or former foreign official, political party official, candidate for political office, or relative (by blood, marriage or otherwise) of such a person has an ownership interest, direct or indirect, in the representative or	_____

	is an employee, officer or director of the representative. ²⁷	
14.	Commerce Department Check: Memorialize any information obtained from the U.S. Department of Commerce. In assessing potential representatives, it may be helpful to obtain an International Company Profile Report (formerly known as a World Trader Data Report) from the Department of Commerce. ²⁸	_____
15.	Once the _____ has evaluated the information contained in the due diligence report, it may in its discretion, take additional actions including any of the actions noted in Items 16 to Item 21 below.	_____
16.	Search the names of all relevant persons and entities through the various services and	_____

²⁷ Contact the _____ if a foreign official is an owner, director, officer or employee of the proposed representative, or is related to any such owners, directors, officers or employees in order to determine next steps. In such cases, further due diligence should be conducted to determine: (i) the name and official position of the representative official; (ii) the foreign official's official duties and responsibilities (or potential, if a candidate); (iii) the type and extent of the foreign official's ownership interest, if any, in the representative; (iv) the position in the representative company held by the foreign official or any relative of such official; and (v) if the foreign official is a relative of an owner, employee, officer or director of the foreign company, the exact relationship of that official to the representative company's owner, employee, officer or director.

²⁸ Note: International Company Profile Reports ("ICP Reports") are not available in all countries and may reflect incomplete data in other countries. In the United States, an ICP Report can be obtained by submitting a letter to a local office of the Commerce Department and identifying as much information AS possible concerning the representative. Outside the United States, ICP Reports can be purchased at the Foreign Commercial Service posts of the Commerce Department. The Company's _____ can assist you in obtaining these reports.

	databases – including private due diligence services – to determine that no relevant parties are included on lists of designated or denied persons, terrorist watches, or similar designations.	
17.	Engage outside counsel to conduct due diligence and issued a report.	_____
18.	Have outside counsel engage a reputable international investigative firm to commission a report on the FCPA Third Party.	_____
19.	Have outside counsel retain a business consultant in the foreign municipality to provide advice on possible due diligence procedures in the foreign country and possible local knowledge of the FCPA Third Party.	_____
20.	Have outside counsel engage an outside forensic accounting firm to prepare a due diligence report.	_____
21.	Engage a second law firm to review the due diligence	_____

FCPA Memorandum and Third-Party Certification for FCPA Compliance

- To: [Insert Third Party Name]
- From: _____
- Subject: _____ FCPA Policy and Certification
- Date: _____

- Integrity is one of _____’s most important values. _____ requires its employees and agents, distributors, consultants, etc. to comply with applicable laws. With limited exceptions, the U.S. Foreign Corrupt Practices Act (“FCPA”) as well as the laws of many other countries prohibit giving anything of value, or retaining third parties to make such payments, to any “foreign official” in order to influence improperly his or her judgment in the performance of official duties. The term “foreign official” includes personnel (i.e., officers and employees) of the state, any department, agency, state-owned companies or enterprises, institutions or people’s organizations engaged in public service, political party officials and candidates for political office, and anyone acting in an official capacity for or on behalf of any government, agency, instrumentality, municipality, or a public international organization, etc.
- Simply put, it is illegal to pay or offer money or provide or offer a gift to a foreign official in order to “get the business” or “retain the business.” _____’s FCPA Policy is attached to this memo to provide you with additional information relating to the FCPA.
- As part of _____’s ongoing program to ensure compliance with the FCPA, _____ distributors and agents providing revenue to _____ and any other third party that is reasonably likely to interact with foreign officials on _____’s behalf, at the request and sole discretion of _____, are required to execute a certification at least annually or when signing a new or renewing an existing contract with _____. The certification represents that they have conducted and will continue to conduct all actions on behalf of _____ in accordance with the FCPA and the laws of the territory in which you are doing business. Accordingly, enclosed is a copy of the certification for your execution. Please read the affidavit carefully, print your name in the first blank, date it, sign it, and return it to _____’s attention.
- Enclosures (Policy and Certification)

Third-Party Certification on Compliance with the Foreign Corrupt Practices Act and Foreign Laws

- _____
ADDRESS
Attention: _____
- On behalf of _____ (the “FCPA Third Party”), I, the undersigned, a duly authorized representative of the FCPA Third Party, hereby represent and warrant that the FCPA Third Party is familiar with the requirements of the Foreign Corrupt Practices Act (“FCPA”) as well as the laws of the territory governed by the agreement(s) between FCPA Third Party and _____, and has conducted and will continue to conduct all actions on behalf of _____, and its subsidiaries _____ (individually _____ and _____ collectively, “_____”), in accordance with the FCPA and the laws of the territory in which you are doing business.
- I, the undersigned, further certify for and on behalf of myself and FCPA Third Party, that neither I, nor any other officer, director, stockholder, employee, representative, distributor and agent of FCPA Third Party, has made, offered to make, or agreed to make any loan, illegal gift, donation or payment, or transfer of any other thing of value directly or indirectly, whether in cash or in kind, to or for the benefit of any “foreign official and/or foreign political party,” in connection with any business activity of _____. For purposes of this certification, the term “foreign official” includes personnel (i.e., officers and employees) of the state, any department, agency, state-owned companies or enterprises, institutions or people’s organizations engaged in public service, political party officials and candidates for political office, and anyone acting in an official capacity for or on behalf of any government, agency, instrumentality, municipality, or a public international organization, etc.
- I hereby confirm that neither I nor any, officer, director, stockholder, employee, representative, distributor or agent of FCPA Third Party is a foreign official as defined above.
- I hereby confirm that should I learn of, or reasonably suspect, any of the prohibited activities described above, or if there are any

changes in the ownership or control of the FCPA Third Party, I will immediately notify _____ in writing.

- FCPA Third Party has kept and will continue to keep complete and accurate written accountings of all payments made by FCPA Third Party (including its officers, directors, stockholders, employees, representatives, distributors and agents) on behalf of _____, or out of funds or discounts provided by _____. A copy of this accounting must be provided to _____ upon request. In no event shall any payment be made by FCPA Third Party (including its officers, directors, stockholders, employees, representatives, distributors and agents) to any undisclosed third party.
- FCPA Third Party agrees to provide prompt certification of its continuing compliance with applicable laws whenever requested by _____.
- **FCPA Third Party**
- Date: _____
- By: _____
- Print Name: _____
- Title: _____
- Company Name: _____

FCPA Provisions for Third Party Agreements

- All distributors and agents providing revenue to _____ as well as any other third party that is reasonably likely to interact with foreign officials on _____ behalf (each a “**FCPA Third Party**”) are required to enter into a written agreement that includes the following provisions or substantially equivalent terms:
 - **U.S. Foreign Corrupt Practices Act.** The U.S. Foreign Corrupt Practices Act (the “**FCPA**”) makes it unlawful to offer, pay, promise or authorize to pay any money, gift or anything of value, including but not limited to bribes, entertainment, kickbacks or any benefit, directly or indirectly, (i) to any foreign official or any foreign political party or (ii) to any person while knowing or suspecting that the payment or gift will be passed on to a foreign

official, in connection with any business activity of _____ or its wholly or partially owned affiliates (collectively “_____”). For the purpose of the Agreement, a “**foreign official**” means any employee or officer of a government of a foreign country (i.e., a country other than the United States of America), including any federal, regional or local department, agency, enterprise owned or controlled by the foreign government, any official of a foreign political party, any official or employee of a public international organization, any person acting in an official capacity for, or on behalf of, such entities, and any candidate for foreign political office.

- **Representations, Warranties and Covenants of Distributor.** Distributor makes the following representations and warranties to _____, and covenants and agrees as follows:

- **Public and Commercial Bribery Representations, Warranties and Covenants of the Distributor.** The Distributor hereby represents, warrants and covenants to _____ that the Distributor has not, and covenants and agrees that it will not, in connection with the transactions contemplated by the Agreement or in connection with any other business transactions involving _____, make, promise or offer to make any payment or transfer of anything of value, directly or indirectly:

- to any foreign official (as defined above) or to an intermediary for payment to any foreign official; or
- to any political party. It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business. This subsection shall not, however, prohibit normal and customary business entertainment or the giving of business mementos of nominal value in connection with the Distributor’s performance under the Agreement.

- **(C) Distributor Certifications.** The Distributor agrees that it will, on behalf of itself and each of its directors, officers, employees, agents or other representatives who have any direct involvement with any of the management or operations of the business of the Distributor under the Agreement, at the request and sole discretion of _____, and at least annually or when signing a new or renewing an existing contract, provide _____ with a certification in the form hereto attached and incorporated by reference.
- **(D) Distributor's Continuing Obligation to Advise.** The Distributor agrees that should it learn or have reason to know of: (i) any payment, offer, or agreement to make a payment to a foreign official or political party for the purpose of obtaining or retaining business or securing any improper advantage for _____ under the Agreement or otherwise, or (ii) any other development during the term of the Agreement that in any way makes inaccurate or incomplete the representations, warranties and certifications of the Distributor hereunder given or made as of the date hereof or at any time during the term of the Agreement, relating to the FCPA or _____'s FCPA Policy, the Distributor will immediately advise _____ in writing of such knowledge or suspicion and the entire basis known to the Distributor therefor.
- **(E) No Governmental Ownership of Distributor.** The Distributor hereby represents and warrants to _____ that no ownership interest, direct or indirect, in the Distributor or in the contractual relationship established by the Agreement, is held or controlled by or for the benefit of any foreign official or foreign political party, and that it will notify _____ in the event of a change in the foregoing.
- **(F) _____ Right of Investigation.** The Distributor agrees that _____ shall have the right, from time to time, upon written notice to the Distributor, to conduct an investigation and audit of the Distributor to verify compliance with the provisions of this section. The Distributor agrees to cooperate fully with such investigation, the scope,

- method, nature and duration of which shall be at the sole reasonable discretion of _____.
- **(G) _____ Rights upon a FCPA Default.** In the event that _____ believes, in good faith, that the Distributor has acted in any way that may subject _____ to liability under the FCPA , _____ shall have the unilateral right, exercisable immediately upon written notice to the Distributor, to terminate the Agreement.
 - **(H) Disclosure to U.S. Government.** The Distributor agrees that full disclosure of information relating to a possible violation of _____'s FCPA Policy or the existence and terms of this Agreement, including the compensation provisions, may be made at any time and for any reason to the U.S. government and its agencies, and to whomsoever _____'s **[General Counsel]** determines has a legitimate need to know.

Courtesy of Rebekah J. Poston, Squire Patton Boggs (US) LLP

APPENDIX B

YATES MEMO ON INDIVIDUAL ACCOUNTABILITY FOR CORPORATE WRONGDOING

US Department of Justice Office of the Deputy Attorney General
The Deputy Attorney General
Washington, D.C. 20530
September 9, 2015

MEMORANDUM FOR:

The Assistant Attorney General, Antitrust Division
The Assistant Attorney General, Civil Division
The Assistant Attorney General, Criminal Division
The Assistant Attorney General, Environment and Natural Resources Division
The Assistant Attorney General, National Security Division
The Assistant Attorney General, Tax Division
The Director, Federal Bureau of Investigation
The Director, Executive Office for United States Trustees
All United States Attorneys

FROM: Sally Quillian Yates
Deputy Attorney General

SUBJECT: Individual Accountability for Corporate Wrongdoing

Fighting corporate fraud and other misconduct is a top priority of the Department of Justice. Our nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens. These are principles that the Department lives and breathes—as evidenced by the many attorneys, agents, and support staff who have worked tirelessly on corporate investigations, particularly in the aftermath of the financial crisis.

One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing.

Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system.

There are, however, many substantial challenges unique to pursuing individuals for corporate misdeeds. In large corporations, where responsibility can be diffuse and decisions are made at various levels, it can be difficult to determine if someone possessed the knowledge and criminal intent necessary to establish their guilt beyond a reasonable doubt. This is particularly true when determining the culpability of high-level executives, who may be insulated from the day-to-day activity in which the misconduct occurs. As a result, investigators often must reconstruct what happened based on a painstaking review of corporate documents, which can number in the millions, and which may be difficult to collect due to legal restrictions.

These challenges make it all the more important that the Department fully leverage its resources to identify culpable individuals at all levels in corporate cases. To address these challenges, the Department convened a working group of senior attorneys from Department components and the United States Attorney community with significant experience in this area. The working group examined how the Department approaches corporate investigations, and identified areas in which it can amend its policies and practices in order to most effectively pursue the individuals responsible for corporate wrongs. This memo is a product of the working group's discussions.

The measures described in this memo are steps that should be taken in any investigation of corporate misconduct. Some of these measures are new, while others reflect best practices that are already employed by many federal prosecutors. Fundamentally, this memo is designed to ensure that all attorneys across the Department are consistent in our best efforts to hold to account the individuals responsible for illegal corporate conduct.

The guidance in this memo will also apply to civil corporate matters. In addition to recovering assets, civil enforcement actions serve to redress misconduct and deter future wrongdoing. Thus, civil attorneys investigating corporate wrongdoing should maintain a focus on the responsible individuals, recognizing that holding them to account is an important part of protecting the public fisc in the long term.

The guidance in this memo reflects six key steps to strengthen our pursuit of individual corporate wrongdoing, some of which reflect policy shifts and each of which is described in greater detail below: (1) in order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct; (2) criminal and civil corporate investigations should focus on individuals from the inception of the investigation; (3) criminal and civil attorneys handling corporate investigations should be in routine communication with one another; (4) absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation; (5) Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases; and (6) civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.²⁹

I have directed that certain criminal and civil provisions in the United States Attorney's Manual, more specifically the Principles of Federal Prosecution of Business Organizations (USAM 9-28.000 *et seq.*) and the commercial litigation provisions in Title 4 (USAM 4-4.000 *et seq.*), be revised to reflect these changes. The guidance in this memo will apply to all future investigations of corporate wrongdoing. It will also apply to those matters pending as of the date of this memo, to the extent it is practicable to do so.

²⁹ The measures laid out in this memo are intended solely to guide attorneys for the government in accordance with their statutory responsibilities and federal law. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States.

1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.

In order for a company to receive any consideration for cooperation under the Principles of Federal Prosecution of Business Organizations, the company must completely disclose to the Department all relevant facts about individual misconduct. Companies cannot pick and choose what facts to disclose. That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct. If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor pursuant to USAM 9-28.700 *et seq.*³⁰ Once a company meets the threshold requirement of providing all relevant facts with respect to individuals, it will be eligible for consideration for cooperation credit. The extent of that cooperation credit will depend on all the various factors that have traditionally applied in making this assessment (*e.g.*, the timeliness of the cooperation, the diligence, thoroughness, and speed of the internal investigation, the proactive nature of the cooperation, etc.).

This condition of cooperation applies equally to corporations seeking to cooperate in civil matters; a company under civil investigation must provide to the Department all relevant facts about individual misconduct in order to receive any consideration in the negotiation. For example, the Department's position on "full cooperation" under the False Claims Act, 31 U.S.C. § 3729(a)(2), will be that, at a minimum, all relevant facts about responsible individuals must be provided.

The requirement that companies cooperate completely as to individuals, within the bounds of the law and legal privileges, *see* USAM 9-28.700 to 9-

³⁰ Nor, if a company is prosecuted, will it support a cooperation-related reduction at sentencing. *See* U.S.S.G. USSG § 8C2.5(g), Application Note 13 ("A prime test of whether the organization has disclosed all pertinent information" necessary to receive a cooperation-related reduction in its offense level calculation "is whether the information is sufficient ... to identify ... the individual(s) responsible for the criminal conduct").

28.760, does not mean that Department attorneys should wait for the company to deliver the information about individual wrongdoers and then merely accept what companies provide. To the contrary, Department attorneys should be proactively investigating individuals at every step of the process—before, during, and after any corporate cooperation. Department attorneys should vigorously review any information provided by companies and compare it to the results of their own investigation, in order to best ensure that the information provided is indeed complete and does not seek to minimize the behavior or role of any individual or group of individuals.

Department attorneys should strive to obtain from the company as much information as possible about responsible individuals before resolving the corporate case. But there may be instances where the company's continued cooperation with respect to individuals will be necessary post-resolution. In these circumstances, the plea or settlement agreement should include a provision that requires the company to provide information about all culpable individuals and that is explicit enough so that a failure to provide the information results in specific consequences, such as stipulated penalties and/or a material breach.

2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.

Both criminal and civil attorneys should focus on individual wrongdoing from the very beginning of any investigation of corporate misconduct. By focusing on building cases against individual wrongdoers from the inception of an investigation, we accomplish multiple goals. First, we maximize our ability to ferret out the full extent of corporate misconduct. Because a corporation only acts through individuals, investigating the conduct of individuals is the most efficient and effective way to determine the facts and extent of any corporate misconduct. Second, by focusing our investigation on individuals, we can increase the likelihood that individuals with knowledge of the corporate misconduct will cooperate with the investigation and provide information against individuals higher up the corporate hierarchy. Third, by focusing on individuals from the very beginning of an investigation, we maximize the chances that the final

resolution of an investigation uncovering the misconduct will include civil or criminal charges against not just the corporation but against culpable individuals as well.

3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.

Early and regular communication between civil attorneys and criminal prosecutors handling corporate investigations can be crucial to our ability to effectively pursue individuals in these matters. Consultation between the Department's civil and criminal attorneys, together with agency attorneys, permits consideration of the full range of the government's potential remedies (including incarceration, fines, penalties, damages, restitution to victims, asset seizure, civil and criminal forfeiture, and exclusion, suspension and debarment) and promotes the most thorough and appropriate resolution in every case. That is why the Department has long recognized the importance of parallel development of civil and criminal proceedings. *See* USAM 1-12.000.

Criminal attorneys handling corporate investigations should notify civil attorneys as early as permissible of conduct that might give rise to potential individual civil liability, even if criminal liability continues to be sought. Further, if there is a decision not to pursue a criminal action against an individual—due to questions of intent or burden of proof, for example—criminal attorneys should confer with their civil counterparts so that they may make an assessment under applicable civil statutes and consistent with this guidance. Likewise, if civil attorneys believe that an individual identified in the course of their corporate investigation should be subject to a criminal inquiry, that matter should promptly be referred to criminal prosecutors, regardless of the current status of the civil corporate investigation.

Department attorneys should be alert for circumstances where concurrent criminal and civil investigations of individual misconduct should be pursued. Coordination in this regard should happen early, even if it is not certain that a civil or criminal disposition will be the end result for the individuals or the company.

4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.

There may be instances where the Department reaches a resolution with the company before resolving matters with responsible individuals. In these circumstances, Department attorneys should take care to preserve the ability to pursue these individuals. Because of the importance of holding responsible individuals to account, absent extraordinary circumstances or approved departmental policy such as the Antitrust Division's Corporate Leniency Policy, Department lawyers should not agree to a corporate resolution that includes an agreement to dismiss charges against, or provide immunity for, individual officers or employees. The same principle holds true in civil corporate matters; absent extraordinary circumstances, the United States should not release claims related to the liability of individuals based on corporate settlement releases. Any such release of criminal or civil liability due to extraordinary circumstances must be personally approved in writing by the relevant Assistant Attorney General or United States Attorney.

5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized.

If the investigation of individual misconduct has not concluded by the time authorization is sought to resolve the case against the corporation, the prosecution or corporate authorization memorandum should include a discussion of the potentially liable individuals, a description of the current status of the investigation regarding their conduct and the investigative work that remains to be done, and an investigative plan to bring the matter to resolution prior to the end of any statute of limitations period. If a decision is made at the conclusion of the investigation not to bring civil claims or criminal charges against the individuals who committed the misconduct, the reasons for that determination must be memorialized and approved by the United States Attorney or Assistant Attorney General whose office handled the investigation, or their designees.

Delays in the corporate investigation should not affect the Department's ability to pursue potentially culpable individuals. While every effort should

be made to resolve a corporate matter within the statutorily allotted time, and tolling agreements should be the rare exception, in situations where it is anticipated that a tolling agreement is nevertheless unavoidable and necessary, all efforts should be made either to resolve the matter against culpable individuals before the limitations period expires or to preserve the ability to charge individuals by tolling the limitations period by agreement or court order.

6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

The Department's civil enforcement efforts are designed not only to return government money to the public fisc, but also to hold the wrongdoers accountable and to deter future wrongdoing. These twin aims—of recovering as much money as possible, on the one hand, and of accountability for and deterrence of individual misconduct, on the other—are equally important. In certain circumstances, though, these dual goals can be in apparent tension with one another, for example, when it comes to the question of whether to pursue civil actions against individual corporate wrongdoers who may not have the necessary financial resources to pay a significant judgment.

Pursuit of civil actions against culpable individuals should not be governed solely by those individuals' ability to pay. In other words, the fact that an individual may not have sufficient resources to satisfy a significant judgment should not control the decision on whether to bring suit. Rather, in deciding whether to file a civil action against an individual, Department attorneys should consider factors such as whether the person's misconduct was serious, whether it is actionable, whether the admissible evidence will probably be sufficient to obtain and sustain a judgment, and whether pursuing the action reflects an important federal interest. Just as our prosecutors do when making charging decisions, civil attorneys should make individualized assessments in deciding whether to bring a case, taking into account numerous factors, such as the individual's misconduct and past history and the circumstances relating to the commission of the misconduct, the needs of the communities we serve, and federal resources and priorities.

Although in the short term certain cases against individuals may not provide as robust a monetary return on the Department's investment, pursuing individual actions in civil corporate matters will result in significant long-term deterrence. Only by seeking to hold individuals accountable in view of all of the factors above can the Department ensure that it is doing everything in its power to minimize corporate fraud, and, over the course of time, minimize losses to the public fisc through fraud.

Conclusion

The Department makes these changes recognizing the challenges they may present. But we are making these changes because we believe they will maximize our ability to deter misconduct and to hold those who engage in it accountable.

In the months ahead, the Department will be working with components to turn these policies into everyday practice. On September 16, 2015, for example, the Department will be hosting a training conference in Washington, D.C., on this subject, and I look forward to further addressing the topic with some of you then.

Courtesy of Rebekah J. Poston, Squire Patton Boggs (US) LLP

APPENDIX C

COMPARISON OF THE FOREIGN CORRUPT PRACTICES ACT ANTI-BRIBERY PROVISIONS WITH THE UK BRIBERY ACT AND RUSSIAN ANTI-BRIBERY PROVISIONS

	Foreign Corrupt Practices Act Anti-Bribery Provisions	England, Wales, Scotland, and Northern Ireland Anti-Bribery Laws and Regulations	Russian Anti-Bribery Provisions
Source	15 U.S.C. §§ 78dd-1, et seq.	The Bribery Act 2010 came into effect in July 2011	Federal Law No. 273-FZ “On Counteracting Corruption” (“ Law on Counteracting Corruption ”) Code of Administrative Offenses Criminal Code
Who can be punished?	<p>Offerors of forbidden payments who are: Issuers of securities that are required to register or file reports pursuant to the Securities Exchange Act, or any officer, director, employee or agent of an issuer or any stockholder acting on behalf of an issuer</p> <p>Domestic concerns – i.e., citizens, nationals or residents of the US or any legal entity with its principal place of business in the US or organized under the laws of the US, or any officer, director, employee, agent or stockholder acting on behalf of a domestic concern</p>	<p>Offerors and acceptors of bribes: This includes individuals and senior officers of a corporate entity if the offense was committed with their consent or connivance The offense can be committed in the UK or by a person with a close connection to the UK. A close connection can include a British citizen, British resident, entities incorporated in any part of the UK and Scottish partnerships The offeror of a bribe to a foreign public official A commercial organization, if a person associated with it bribes another person and the organization did not have adequate procedures in place to prevent such conduct. This applies to all partnerships or companies incorporated in any part of the UK and to any foreign</p>	<p>Offerors and acceptors of bribes: This includes commercial organizations on whose behalf bribes are made and individuals that facilitate bribes, including commercial bribes Abusers of position</p>

	Anyone acting within the territory of the US	partnership or company that carries on a business or a part of a business in the UK	
What constitutes the subject of the prohibited transfer?	<p>“Anything of value” (examples may include but are not limited to cash or cash equivalents, real or personal property, offers of employment, etc.)</p> <p>There is no <i>de minimis</i> amount</p> <p>May include payment to a relative</p> <p>Authorization of illicit payment to be made by someone else (e.g., sales agent)</p>	<p><i>Any</i> financial or other advantage</p> <p>The person to whom the advantage is offered, promised or given does not have to be the same person as the person who has performed or will/may perform the function or activity concerned</p> <p>It does not matter whether the advantage is offered, promised or given directly or through a third party</p>	<p>“Anything of value” (examples may include but are not limited to cash or cash equivalents, real or personal property, offers of employment, etc.)</p> <p>May include payment to a relative</p> <p>It does not matter whether the advantage is offered, promised or given directly or through a third party</p> <p>Cash gifts and gifts with a nominal value exceeding 3,000 rubles are prohibited</p> <p>Gifts given in order to influence or attempt to influence the conduct of a third party</p>
What is prohibited and involving whom?	<p>Offers, promises (the payment does not have to be in fact made) or payments of:</p> <p>Anything of value</p> <p>To a foreign official (i.e., any officer or employee of any foreign government, department or agency of a foreign government; any instrumentality of a foreign government or of a public international organization; or any person acting in an official capacity for or on behalf of any such person or entity), foreign political party, party official, any candidate for foreign political office or any other person while <i>knowing</i> (i.e., actual knowledge, substantial certainty or a firm belief)</p>	<p>Offering bribes to another person:</p> <p>This occurs where a person offers, promises or gives a financial or other advantage to a recipient in exchange for the recipient’s improper performance of a public or business activity</p> <p>This applies in the public and the private sector</p> <p>Accepting/ receiving a bribe:</p> <p>This occurs where a person requests, agrees or accepts a financial or other advantage in exchange for the recipient to perform a public or business activity improperly</p> <p>This applies in the public and the private sector</p> <p>Bribing a “foreign public official”:</p> <p>This occurs where a person attempts to influence</p>	<p>Unlawful transfers of value on behalf of the company – unlawful transfer, offer or promise of money, securities, other property, provision of services of a proprietary nature and other proprietary interests on behalf of a commercial organization to or for the benefit of a <i>public official, state official, corporate officer</i> or <i>foreign public official</i> to procure that such official take an action to such commercial organization (Article 19.28 of the Administrative Code)</p> <p>Giving a bribe to a public official or a foreign public official – giving to a <i>public official</i> or a <i>foreign public official</i> personally or through a third person money, securities and other property or services of a</p>

	<p>that all or part of the payment, promise or offer to pay will be passed onto one of the above</p> <p>Third-party payments are also prohibited (e.g., foreign sales rep, marketing consultant, distributor, joint venture partner, foreign subsidiary or contractor)</p> <p>With corrupt intent</p> <p>For the purpose of influencing an official act or decision of the person, inducing that person to do or omit to do any act in violation of their lawful duty, inducing that person to use their influence with a foreign government to affect or influence any government act or decision, or secure any improper purpose</p> <p>To assist in obtaining or retaining business for or with, or directing business to any person</p> <p>Applies to existing and future business (e.g., obtaining or renewal of contracts, etc., as well as corrupt payments relating to performance of existing contracts or carrying out existing business)</p>	<p>a foreign public official (including an official of a public international organization) in their official capacity to obtain business (which includes a business advantage)</p> <p>This offense is not dependent on improper performance by the foreign public official</p> <p>The key elements of the offense are:</p> <p>an intention to influence a foreign official in their official capacity;</p> <p>an intention to obtain or retain business, or to secure an advantage in the conduct of business; and</p> <p>the relevant act or omission is neither permitted nor required by local written law (or the rules of a public international organization)</p> <p>Failure of a company to prevent bribery:</p> <p>This occurs where a person “associated” with the company or partnership (including employees, agents and third-party associates) bribes another person to get business (or obtain a business advantage)</p> <p>No direct contractual link is required between the “associated person” and the organization</p> <p>The only available defense to this charge is if the company or partnership can prove that it had in place “adequate procedures” designed to prevent bribery</p> <p>Guidelines are to be published by the secretary of state about the adequate procedures that should be put in place by a company to ensure prevention</p>	<p>proprietary nature and other proprietary interests to procure that such official take an action to the benefit of a bribe-giver in case such actions are considered to be within the authority of a bribe-taker or if the bribe-taker is capable of facilitating such actions due to their position as well as generally for patronage or for overlooking failures to perform duties of office (Articles 290 and 291 of the Criminal Code)</p> <p>Abuse of power – the exercise by a corporate officer of their authority contrary to lawful interests of the entity they serve for the purpose of obtaining a personal profit or advantage for themselves or other third persons where the same results in significant harm to the rights and interests of individuals or legal entities or public or national interests protected by law (Article 201 of the Criminal Code)</p> <p>Facilitating a bribe – direct transfer of a bribe in the name of a bribe-giver or a bribe-taker or other facilitation of the transfer of a bribe (Article 291.1 of the Criminal Code)</p> <p>Commercial bribery – unlawful giving to or receiving by a <i>corporate officer</i> of money, securities and other property or services of a proprietary nature and other</p>
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			proprietary interests for the action taken to the benefit of a bribe-giver in connection with the official position of a corporate officer (Article 204 of the Criminal Code)
Penalties	<p>Maximum penalties:*</p> <p>Corporations:</p> <p>Criminal – US\$2 million**</p> <p>Civil – US\$10,000 (DOJ); US\$500,000 (SEC)***</p> <p>Individuals:</p> <p>Criminal – US\$100,000 or 5 years imprisonment, or both**</p> <p>Civil – US\$10,000 (DOJ); US\$100,000 (SEC)***</p> <p>* Whenever a fine is imposed on any corporate officer, director, employee, agent or stockholder, the corporate entity may not pay, directly or indirectly, the individual's fine</p> <p>** DOJ criminal anti-bribery violations are subject to 18 U.S.C. § 3571, which provides an individual may be fined a maximum of US\$250,000, or, alternatively, any defendant may be fined twice the gain someone derived or lost from the offense</p> <p>*** In an SEC civil enforcement action, the court may impose a fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the</p>	<p>Individual – 10 years and/or unlimited fine</p> <p>Any other person – unlimited fine</p>	<p>Commercial enterprises:</p> <p>Commercial enterprises cannot be held criminally liable under the law</p> <p>The law has a progressive system of penalties based on the amount of the bribe and whether it was part of a conspiracy or other aggravating circumstances</p> <p>Unlawful transfers of value on behalf of the company may result in administrative fines up to 100 times of the amount of the bribe (or any other illegal payment or benefit) but not less than 100,000,000 rubles and confiscation of assets illegally paid or transferred</p> <p>Individuals:</p> <p>The law has a progressive system of penalties based on the amount of the bribe and whether it was part of a conspiracy or other aggravating circumstances</p> <p>Confiscation of assets illegally paid or transferred</p> <p>Maximum criminal fines up to 90 times the amount of the bribe given or offered or 70 times the amount of the bribe given or</p>

	defendant as a result of the violation, or (ii) a specified dollar limitation		<p>offered and up to 12 years imprisonment for givers and facilitators of bribes</p> <p>Maximum criminal fines up to 100 times the amount of the bribe accepted or 80 times the amount of the bribe accepted and up to 15 years imprisonment for receivers of bribes</p> <p>Maximum criminal fines up to 70 times the amount of the commercial bribe and up to 6 years imprisonment for givers and facilitators of commercial bribes</p> <p>Maximum criminal fines up to 90 times the amount of the commercial bribe and up to 12 years imprisonment for receivers of commercial bribes</p> <p>Maximum criminal fines up to 1 million rubles or an amount equal to 5 years of income, up to 10 years imprisonment and debarment up to 3 years for those who abuse their position</p> <p>Lesser punishments may include corrective labor, compulsory work, debarment, lesser fines and prison terms</p>
Exceptions/ affirmative defenses	<p>Exception: “Grease payments” – payments to a foreign official, political party or party official to speed up or secure performance of routine governmental action</p> <p>Affirmative defenses: Conduct is lawful under the <i>written</i> laws</p>	<p>General rule – no exceptions or defenses</p> <p>A commercial organization is not guilty of an offense if a person associated with it bribes another person and the organization had adequate procedures in place to prevent such conduct</p>	<p>Gifts with a nominal value 3,000 rubles or less</p> <p>A person who has given a bribe shall be released from criminal liability if the bribe is a result of extortion or if the person voluntarily informs the relevant executive authorities of the bribe and cooperates in the investigation and prosecution</p>

	<p>of the country of the foreign official, political party, party official or candidate; or</p> <p>The payment, gift, offer or promise of anything of value that was made was a reasonable and bona fide expense incurred by or on behalf of a foreign official, party, party official or candidate and was directly related to (1) the promotion, demonstration or explanation of products or services, or (2) the execution or performance of a contract with a foreign government or agency thereof</p>		<p>The ban to donate gifts to persons holding state offices of the Russian Federation, state offices of constituent entities of the Russian Federation or municipal offices, to municipal employees and to employees of the Bank of Russia shall not extend to the cases where gifts are donated in connection with official protocol events, business missions and other official activities. The gifts received by persons holding state offices of the Russian Federation, state offices of constituent entities of the Russian Federation or municipal offices, by municipal employees and by employees of the Bank of Russia whose value exceeds 3,000 rubles shall be deemed to be the property of the relevant constituent body served by such official and delivered to such constituent body</p>
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Courtesy of Rebekah J. Poston, Squire Patton Boggs (US) LLP

APPENDIX D

SURVEY OF ANTICORRUPTION LAWS IN LATIN AMERICA

Country	Domestic Bribery Laws	Foreign Bribery Laws	Company Subject to Criminal Liability	Company Subject to Fines	Company Liable for Acts of Third Parties	Penalties	Mitigation
Argentina Argentine Criminal Code (ACC), anti-bribery provisions amended by Law N° 25.188, enacted 2009. Government Contracts System Decree-Law N° 1023/2001 Law N° 25.246 on Concealment and Money Laundering,	✓	✓	×	✓	✓	Companies <u>Foreign and Domestic Bribery</u> Confiscation of the bribe or bribe proceeds. (ACC, Art. 23) For acts also constituting money laundering, terrorist financing or any other offense that subjects the corporation to criminal liability, sanctions may also include fines, suspension, and cancellation of legal status and termination of state benefits. (Id., Arts. 304 to 313) Possible debarment from all public works, licenses and public services contracts. (Law N° 1023/2001, Art. 10) Refusal of the proposal or bid at any stage of the public bidding	Prosecutor has no discretion to enter into settlements or plea agreements in criminal cases. (ACC, Art. 71) The benefit of probation shall not be granted for offenses committed by public officials. (Id., Art. 76-bis)

Decree-Law N° 169/01 regulated by Law N° 25.246.					<p>process or the termination of the contract by force of law. (Id.)</p> <p><u>Concealment and Money Laundering Offenses</u></p> <p>Fines may range from 5 up to 20 times the value of the amount involved in the offense. (Law N° 25.246, Art. 23)</p> <p>Fines may range from AR \$50,000 up to AR \$500,000 (approximately \$5,530.64 USD to \$55,306.38 USD) for violation of confidential information and related tasks that may be derived. (Id., Art. 23.)</p> <p>Individuals</p> <p><u>Foreign and Domestic Bribery</u></p> <p>Reclusion for 1 to 6 years or permanent suspension of business activities. (ACC, Art. 258-bis)</p> <p>Imprisonment for 1 to 6 years for active bribery. (Id., Art. 258-bis)</p> <p><u>Penalties for all offenses established in the Criminal Code</u></p> <p>Possible fine even when no gain or profit was made as a result of the offense. If profits were not</p>	
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						made, fine will not exceed AR \$90,000 (approximately \$9,955.15 USD). (ACC., Art. 22-bis) Seizure of assets used for the offense or obtained as a result of the offense, excepting third parties' right to restitution. (Id., Art. 23)	
Bolivia Bolivian Penal Code. Law on Anti-Corruption, Illicit Enrichment, and Investigating Fortunes, Law N° 004, enacted 2010.	✓	✓	×	✓	✓	Companies <u>Illicit Enrichment affecting the State (Domestic)</u> Return of any property and proceeds obtained as a result of the unlawful act. (Law N° 004, Art. 28) A fine of 25 percent of company assets. (Id.) Individuals <u>Illicit Enrichment Affecting the State (Domestic)</u> Imprisonment 3-5 years. (Id.) Fine of 100-300 days wages. (Id.) Confiscation of goods obtained illegally. (Id.) <u>Foreign Bribery</u> Imprisonment for 5 to 10 years and a fine of 100 to 500 days' wages. (Id., Art. 30) <u>Domestic Bribery</u> The penalty attributed to public officials (imprisonment for 2 to 6	Mitigating Factors Voluntary disclosure may result in a 2/3 reduction of the penalty. (Law N° 004, Art. 35)

						years and a fine of 30 to 100 days' wages) will be decreased by 1/3 for non-public official individuals. (Penal Code, Art. 145 & Art. 158)	
Brazil Anti-Corruption Law ("Clean Company Law"), Law N° 12,846, enacted August 2, 2013, effective January 29, 2014. Decree N° 8,420, enacted on March 18, 2014 (Regulates the Clean Company Law) Brazilian Criminal Code, Decree-Law N° 2,848, December 7, 1940, as amended by	✓	✓	×	✓	✓	Companies <u>Foreign Bribery, Domestic Bribery, Use of a Third Party (Legal Entity or Individual) to Hide Identity of Beneficiaries, Bid Rigging, Interfering with Investigations</u> Fines can range from 0.1% up to 20% of the company's annual gross revenues for the previous year. (Law N° 12.846, Art. 6) If annual gross revenues cannot be determined, fines shall range between R\$6,000–R\$60,000,000 (approximately \$1,939.99 USD–\$19,399,923.00 USD). (Id.) The fine may not be lower than the benefit obtained by the company. (Id.) Publication of the disciplinary action in a national registry. (Id.) Ban on incentives, subsidies,	Mitigating Factors An effective compliance program with: <ul style="list-style-type: none"> • An internal mechanism for corporate integrity. • Audit and incentives for reporting irregularities. • A code of ethics. (Law N° 12.846, Art. 7) • Self-reporting may be met with leniency: • The fine may be reduced by 2/3. • Immunity from the prohibition on receipt of incentives and subsidies from public entities. • Avoiding debarment. (Id., Art. 16) • Self-reporting requirements: • The legal entity must be the first to indicate its interest to self-disclose. • The legal entity must

<p>Law N° 10,467 in 2002.</p> <p>Anti-Money Laundering Law, Law N° 9.613, March 3, 1998.</p> <p>Law N° 10.467 of 2002, adopting the OECD Anticorruption Convention, entry into force October 23, 2000.</p>					<p>and public financing for 1 to 5 years. (Id., Art 19)</p> <p>Seizure and confiscation of assets and gains. (Id.)</p> <p>Debarment. (Id.)</p> <p>Partial suspension or interruption of company activities. (Id.)</p> <p>Compulsory dissolution of the legal entity. (Id.)</p> <p>Successor entity is only liable for a fine and compensation for damage caused up to the value of transferred assets in the case of sale, merger or acquisition. (Id., Art. 4)</p> <p>Joint liability for the parent, affiliated companies, subsidiaries and members of the same consortium. (Id.)</p> <p>Individuals</p> <p><u>Foreign Bribery</u></p> <p>Imprisonment for 1 to 8 years and a fine for foreign bribery. (Law N° 2,848, Art. 337-B&C)</p> <p><u>Domestic Bribery</u></p> <p>Imprisonment for 2 to 12 years and monetary fines for passive and active domestic bribery. (Id., Arts. 317, 332, 333)</p>	<p>admit its guilt.</p> <ul style="list-style-type: none"> • The legal entity must cooperate with the investigation. (Id.)
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						<p><u>Trafficking in Influence</u> Imprisonment for 2 to 5 years and monetary fines for “trafficking in influence.” (Id., Art. 337-C)</p> <p><u>Money Laundering</u> The receiver of a bribe may be liable under the Brazilian Money Laundering Law, punishable by imprisonment for 3 to 10 years and a fine. (Law N° 9.613)</p>	
<p>Chile Chilean Criminal Code, anti-bribery provisions amended by Law N° 19.829, 2002.</p> <p>Legal Entities Criminal Liability Law, Law N° 20.393, effective December 2, 2009. OECD Anticorruption Convention,</p>	✓	✓	✓	✓	✓	<p>Companies</p> <p><u>Domestic Bribery</u> Dissolution of the legal entity. (Law N° 20.393, Art. 9) Temporary or perpetual ban from government contracting. (Id., Art. 10) Partial or full loss of government benefits for 2 to 5 years. (Id., Art. 11) Fines ranging from 200 to 10,000 monthly tax units (approximately \$13,736.96 to \$686,848.00 USD) (Id., Art.12) Disgorgement. (Id., Art. 13) Publication of the judicial decision in the <i>Official Gazette</i> or newspaper of national circulation. Costs covered by</p>	<p>Mitigating Factors Companies may request a reduction in penalties by trying to mitigate conditions prior to commencement of trial by:</p> <ul style="list-style-type: none"> • Attempting to repair damage caused and prevents further harm. • Cooperating with the investigation. • Adopting measures to prevent and discover violations. (Law N° 20.393, Art. 6) • Companies may put in practice internal policies aimed at preventing money laundering, financing of terrorist activities and bribery

entry into force June 17, 2001.					<p>company. (Id.)</p> <p>Liability can pass from one legal entity to another through a merger or acquisition. (Id., Art. 18)</p> <p>In the case of transformation, merger or acquisition, the resulting/acquiring entity shall pay the fine. (Id.)</p> <p>In the case of the entity's division, the resulting/surviving parties shall be severally liable for payment of the fine. (Id.)</p> <p>In the case of voluntary dissolution, equity holders shall pay the fine, which shall not exceed their equity participation. (Id.)</p> <p>If the punishment is other than a fine, the judge shall determine which entities/individuals should be punished. (Id.)</p> <p>Individuals</p> <p><u>Foreign and Domestic Bribery</u></p> <p>In the case of non-economic benefits, a fine of 100 to 1,000 monthly tax units (approximately \$6,868.48 to \$68,684.82 USD). (Criminal Code, Arts. 250-251-bis)</p>	<p>to domestic and foreign public officials by implementing an internal compliance program to include:</p> <ul style="list-style-type: none"> • appointment of a compliance officer, • documented compliance program and procedures in the employee handbook, employment agreements and third party agreements, and • establishment of a crime prevention system with oversight and certification. (Id., Art. 4) • Certification may be achieved by using auditing firms, rating companies and any other entity so registered with the Chilean Superintendence of Securities and Insurance. (Id.) • Implementation of these internal compliance measures before the offense is committed may result in the legal entity being regarded as – in
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						<p>Reclusion for 2 months to 3 years for the person who consents or agrees to give or provide such a benefit. (Id.)</p> <p>Reclusion for 18 months to 5 years for the person who offers, promises or gives a bribe. (Id.)</p> <p>A fine equal to and up to twice the amount of the bribe. (Id.)</p> <p>Absolute or special impediment to hold public office. (Id.)</p>	<p>performance of and compliance with its administrative and oversight duties (the criminal offense results from the legal entity's failure to perform its administrative and oversight duties). (Id., Art. 3)</p>
<p>Colombia</p> <p>Colombian Penal Code.</p> <p>Colombian Penal Procedure Code.</p> <p>Colombian Anti-corruption Law, Law N° 1474, enacted 2011.</p> <p>Law 1573 of 2012, adopting the OECD</p>	✓	✓	✗	✓	✓	<ul style="list-style-type: none"> • Companies <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Temporary or permanent suspension of legal status. (Penal Procedure Code, Art. 91) • Temporary closure of the commercial establishment. (Id.) • Fines from 500 to 2,000 times the current legal monthly wages (approximately \$126,318.37 to \$505,273.50 USD) for offenses against the Public Administration or against public funds. (Law N° 1474, Art. 34) <p><u>Foreign Bribery</u></p> <ul style="list-style-type: none"> • Ineligibility to contract for 20 	<p>Discretionary Prosecution</p> <p>The prosecution may choose not to prosecute a perpetrator or an accomplice to a bribery offense if the perpetrator or the accomplice:</p> <ul style="list-style-type: none"> • Files the report that gives rise to the investigation; • Provides useful evidence for trial; • Serves as a witness for the prosecution; and • Fully and voluntarily repairs the damage caused. (Law N° 1474, Art. 40) • There are no reductions in penalties or sentencing alternatives for transnational or domestic

Anticorruption Convention, entry into force January 19, 2013.					<p>years for corporations (except those publicly traded) whose employees or officers are found guilty of transnational bribery. (Id., Art. 1)</p> <ul style="list-style-type: none"> • Individuals <p><u>Foreign Bribery</u></p> <ul style="list-style-type: none"> • Ineligibility from public contracting for individuals convicted of foreign bribery. (Id.) • Imprisonment for 9 to 15 years. (Law N° 1474, Art. 30) (Penal Code, Art. 433) • Fines of 100 to 200 current minimum legal monthly wages (approximately \$25,263.67 to \$50,527.35 USD). (Id.) <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Imprisonment for 4 to 9 years. (Penal Code, Art. 407) • Fines of 66.66 to 150 current minimum legal monthly wages (approximately \$16,840.77 to \$37,895.51 USD). (Id.) • Ineligibility to exercise rights and public functions for 80 to 144 months. (Id.) <p><u>Bid Rigging</u></p>	bribery offenses. (Id., Art. 13)
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						<p>Imprisonment for 6 to 12 years. (Law N° 1474, Art. 27)</p> <p>Fines of 200 to 1,000 current minimum legal monthly wages (approximately \$50,527.35 to \$252,636.75 USD). (Id.)</p> <p>Disqualification from contracting with state entities for 8 years. (Id.)</p> <p><u>Trafficking in Influence</u></p> <p>Imprisonment for 4 to 8 years. (Id., Art. 28)</p> <p>Fines of 100 to 200 minimum legal monthly wages (approximately \$25,263.67 to \$50,527.35 USD). (Id.)</p> <p><u>Commercial Bribery</u></p> <p>Imprisonment for 4 to 8 years. (Id., Art. 16) Fines of 10 to 1,000 minimum legal monthly wages (approximately \$2,526.37 to \$252,636.75 USD). (Id.)</p>	
<p>Costa Rica</p> <p>Anti-Corruption and Unlawful Enrichment of Public Officials (ACUEPO), Law N° 8422, enacted 2004.</p>	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> • Companies <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Fine of 20 to 1,000 “base salaries” (approximately \$15,085.06 to \$754,253.12 USD) or up to 10% of the contract awarded, whichever is higher. (Law N° 8422, Art. 44-bis) • Cancellation of the operating 	<p>Settlements</p> <ul style="list-style-type: none"> • The attorney general may enter into settlement agreements with companies to reach a desired financial penalty. • The attorney general may not settle felony criminal cases relating to crimes against the public

Public Contracting, Law N° 7494, effective 1996.					<p>license. (Id.)</p> <ul style="list-style-type: none"> • Closure of the company for up to 5 years. (Id.) • Loss of tax benefits or exemptions previously granted. (Id.) • Disqualification from public contracting for 2 to 10 years. (Law N° 7494, Art. 100) • Individuals <p><u>Foreign Bribery</u></p> <ul style="list-style-type: none"> • Imprisonment for 2 to 8 years. (Law N° 8422, Art. 55) • Imprisonment for 3 to 10 years if the act performed by the official goes against his or her duties. (Id.) • Same charge will be applied to the person that requests, accepts and receives the bribe (Id.) <p><u>Foreign and Domestic Bribery</u></p> <ul style="list-style-type: none"> • Legal representatives may be liable for illegal acts committed by the company if they fail to act according to their duties. (Id., Art. 2) • Imprisonment for 1 to 8 	administration.
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						years for hiding, transforming or transferring assets obtained as a result of unlawful enrichment or bribery of a public official. (Id., Art. 47)	
Dominican Republic Criminal Code of the Dominican Republic, anti-bribery provisions amended by Law N° 448-06 on National and Transnational Bribery, dated December 6, 2006.	✓	✓	✗	✓	✓	<ul style="list-style-type: none"> • Companies <u>Foreign and Domestic Bribery</u> <ul style="list-style-type: none"> • Fines of up to twice the gross amount of the bribe offered. (Law N° 448-06, Art. 6) • Fine cannot be less than 75 minimum wage salaries. (Id.) • Shut-down or intervention of the company from 2 to 5 years. (Id.) • Individuals <u>Foreign and Domestic Bribery</u> <ul style="list-style-type: none"> • Fines of up to twice the gross amount of the bribe offered. (Id., Art. 5) • Fine can be no less than the sum of 50 minimum wage salaries. (Id.) • Reclusion for 3 to 10 years for the individual providing a bribe and for the legal 	<ul style="list-style-type: none"> • No provisions for self-disclosure in exchange for lesser penalties. • Prosecutors may request leniency. • Individuals that, in good faith, report any violations will be protected by the Dominican authorities. (Law N° 448-06, Art. 9)

						<p>representative of the company. (Id.)</p> <ul style="list-style-type: none"> • Suspension of the professional license for 2 to 5 years if the individual is a professional, owner, or representative of a company from the industrial, commercial, agro-industrial or service sector. (Id.) • Shut-down or intervention of the company under the individual's responsibility while his professional license is suspended. (Id.) 	
Ecuador Ecuadorian Penal Code.	✓	×*	×	×	×	<ul style="list-style-type: none"> • Individual <u>Domestic Bribery</u> <ul style="list-style-type: none"> • An officer that accepts a bribe for performing a legal duty will receive imprisonment of 6 months to 3 years and a fine for the double of the amount of the bribe. (Ecuadorian Penal Code, Art. 285) • An officer that accepts a bribe to perform an illegal duty or abstain from performing his duty will receive imprisonment for 3 	No mention.

						<p>to 6 years and a fine of triple the amount of the bribe. (Id., Art. 286)</p> <ul style="list-style-type: none"> • The person that offers, promises or gives a bribe will receive the same penalties as the public official that receives the bribe. (Id., Art. 290) 	
El Salvador El Salvadoran Penal Code.	✓	✓	×	✓	✓	<ul style="list-style-type: none"> • Companies <u>Foreign and Domestic Bribery</u> <ul style="list-style-type: none"> • Companies incur civil (several) liability for acts of foreign and domestic bribery committed by its directors, legal representatives or administrators. (Penal Code, Art. 38) • Individuals <u>Foreign Bribery</u> <ul style="list-style-type: none"> • Imprisonment for 2 to 4 years. (Art. 335-A) • <u>Domestic Bribery</u> <ul style="list-style-type: none"> • Imprisonment for 6 to 10 years. (Art. 335) • Imprisonment for 2 to 4 years when the bribe concerns a legal and proper act of the public official. (Id.) 	No mention.

Guatemala Guatemalan Penal Code, anti-bribery provisions amended by Law N° 31-2012, “Law Against Corruption,” enacted November 22, 2012.	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Companies <u>Foreign and Domestic Bribery</u> <ul style="list-style-type: none"> Companies are criminally responsible for offenses committed by their directors, managers, officers agents or employees and shall receive the same sanctions. (Law N° 31-2012, Art. 38) A fine from \$10,000 USD to \$625,000 USD may be imposed according to the felony and economic capacity of the company. (Id.) Revocation of the operating license for repeated offenses. (Id.) Individuals <u>Foreign and Domestic Bribery</u> <ul style="list-style-type: none"> Fine between 50,000 and 500,000 Quetzals (approximately \$6,537.23 to \$65,372.30 USD). (Id.) Imprisonment for 4 to 10 years. (Id.) 	Mitigating Factors The person that reports a domestic bribery felony or helps obtain evidence for the investigation will be exempted from criminal liability (Id., Art. 444)
Honduras Honduran	✓	✓	✓	✓	✓	<ul style="list-style-type: none"> Companies <u>Foreign and Domestic</u>	No mention.

Penal Code, anti-bribery provisions amended by Decree N° 114-2006, effective March 24, 2006.						<p><u>Bribery</u></p> <ul style="list-style-type: none"> • Suspension of business activities. (Penal Code, Art. 369-C); • Closure of the office to the public for a term of 2 to 4 years (Id.); or • A fine of 100,000 to 1,000,000 Lempiras (approximately \$4,554.96 to \$45,549.58 USD) depending on the seriousness of the act; or double the benefit obtained; or a combination of both. (Arts. 366, 366-A). • Individuals <p><u>Foreign and Domestic Bribery</u></p> <ul style="list-style-type: none"> • Reclusion for 5 to 7 years and absolute [or special] disqualification for the duration of the reclusion. (Id.) • Half of the reclusion and absolute disqualification penalty period for the individual who assists, instigates, or conspires in commission of the act. (Id.) • Anyone who incurs criminal liability is also civilly liable. (Id., Art. 105) 	
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						<ul style="list-style-type: none"> • Civil penalties include: restitution, repair of material and moral damage; and compensation for harm caused. (Id., Art. 107) 	
<p>Mexico Federal Penal Code.</p> <p>Federal Anticorruption Law in Public Procurement, enacted June 11, 2012.</p> <p>OECD Anticorruption Convention, entry into force July 26, 1999.</p>	✓	✓	×	✓	✓	<ul style="list-style-type: none"> • Companies <p><u>Foreign and Domestic Bribery</u></p> <ul style="list-style-type: none"> • Disqualification from federal public procurement for 3 months to 10 years. (Federal Anticorruption Law, Art. 27) • Fines ranging from 10,000 to 2 million times the daily minimum wage in the Federal District (approximately \$454,000.00 to \$908,000.00 USD). (Id.) • Exclusion from receipt of any subsidies, donations or benefits provided by federal law. (Id., Art. 30) • Fines may be based on 1,000 ‘fine days’ for foreign bribery. (Federal Penal Code, Art. 222-bis) • A judge may suspend or dissolve the company. (Id.) • Individuals <p><u>Foreign and Domestic</u></p>	<p>Mitigating Factors</p> <ul style="list-style-type: none"> • Severity of the offense. • Economic circumstances of the offender. • Offender’s background including behavior in federal public procurement or international commercial transactions. • Offender’s degree of participation. • Means of execution. • Recidivism of offenses. • Amount of benefit, profit or damage. (Federal Anticorruption Law, Art. 28) • 50 to 70 percent reduction in penalties when the plea is entered during the investigation phase. (Id., Art. 31) • Up to 50 percent reduction in penalties when the plea is entered during the

					<p><u>Bribery</u></p> <ul style="list-style-type: none"> • Fines ranging from 1,000 to 50,000 times the daily minimum wage in the Federal District, (approximately \$4,540.00 to \$227,000.00 USD). (Federal Anticorruption Law, Art. 27) • Disqualification from federal public procurement for 3 months to 8 years. (Id.) • Fines may be based on 30 to 300 ‘fine days’. (Federal Penal Code, Art. 222-bis) • If the value of the bribe is less than 500 times the minimum wage in the Federal District (approx. 32,000 pesos), then imprisonment for 3 months to 2 years; or imprisonment for 2 to 14 years if the value of the bribe is more than 500 times the minimum wage in the Federal District. (Id.) • Fines may be increased by 50 percent if the benefit obtained is more than the maximum fine. (Federal Penal Code, Art. 27) • Fines may be increased between 30-35 percent if the 	<p>sanctions phase. (Id., Art. 32)</p>
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						maximum amount of the fine is less than 30 percent of the contract. (Id.)	
Nicaragua Nicaraguan Penal Code, anti-bribery provisions amended by Law N° 641, enacted 2008.	✓	✓	×	✓	✓	<p>Companies</p> <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Companies may be subject to one or more of the following sanctions: • Government intervention for up to 5 years to safeguard workers or creditors' rights. (Penal Code, Art. 113) • Permanent or temporary suspension of operations. Temporary closure of up to 5 years. (Id.) • Dissolution of the company. (Id.) • Permanent or temporary ban on the future activities of the same kind as those related to the offense. Temporary ban of up to 5 years. (Id.) • The company may be responsible for fines when a director or employee acts for the benefit of the company (Id., Art. 309) • Individual <p><u>Foreign Bribery</u></p>	No mention.

						<ul style="list-style-type: none"> • Imprisonment for 4 to 8 years and a fine of 500 to 1,000 “fine days”. (Id., Art. 449) <p><u>Domestic Bribery</u> Imprisonment for 3 to 6 years and a fine of 300 to 500 days’ wages. (Id., Art. 446)</p>	
Panama Panamanian Penal Code.	✓	✓	×	✓	✓	<p>Companies</p> <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Cancellation or suspension of the license or registration for a term not exceeding 5 years. (Penal Code, Art. 51) • Total or partial loss of tax benefits. (Id.) • Debarment from contracting with the State, directly or indirectly, for a period of up to 5 years, which will be enforced in conjunction with any of the above. (Id.) • Dissolution of the company. (Id.) • Fines of not less than 5,000 Balboas (\$5,000 USD) and no more than twice the injury or beneficial interest. (Id.) • Individuals <p><u>Foreign Bribery</u></p>	<ul style="list-style-type: none"> • There is no specific provision for leniency. However, self-reporting may be treated favorably.

						<ul style="list-style-type: none"> • Imprisonment for 5 to 8 years. (Id., Art. 350) <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Imprisonment for 3 to 6 years. (Id., Art. 347) 	
Paraguay Paraguayan Penal Code.	✓	×*	×	×	×	<ul style="list-style-type: none"> • Individuals <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • For a bribe that depends on the official's discretion, imprisonment for up to 2 years or a fine. (Penal Code, Art. 302) • For a bribe that is prejudicial to the official's duties, imprisonment for up to 3 years. (Id., Art. 303) 	No mention.
Peru Peruvian Penal Code. Loss Domain Act, Decree- Law N° 1104.	✓	✓	×	✓	✓	<ul style="list-style-type: none"> • Companies <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Disgorgement of profits received. (Penal Code, Art.104) • Temporary or permanent closure of facilities. Temporary closure for up to 5 years. (Penal Code, Art.105), • Dissolution and liquidation of the company. (Id.) • Suspension of business activities for up to 2 years. 	No mention.

					<p>(Id.)</p> <ul style="list-style-type: none"> • Temporary or permanent ban on engaging in the same type of business activities as those related to the offense. Temporary ban of up to 5 years. (Id.) • Liability is not affected by change in legal status or company reorganization. (Id.) • Individuals <p><u>Foreign Bribery</u></p> <ul style="list-style-type: none"> • Imprisonment for 5 to 8 years, plus 365-730 ‘fine days’ for bribery with the purpose of obtaining or retaining a business or other benefit in economic activities or international transactions. (Penal Code, Art. 397-A) <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Imprisonment for 3 to 5 years, plus 365-730 ‘fine days’ for bribes related to acts within the public officials normal duties. (Penal Code, Art. 397) • Imprisonment for 4 to 6 years, plus 365-730 ‘fine days’ for bribes related to acts beyond the public officials 	
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						<p>normal duties. (Id.)</p> <ul style="list-style-type: none"> • Imprisonment for 5 to 8 years, plus 180-365 ‘fine days’ for bribery with the purpose of influencing a judge, prosecutor, expert, arbitrator or administrative tribunal member’s decision. If the person offering the bribe is a lawyer or part of a law firm, imprisonment for 5 to 8 years, plus 365-730 ‘fine days’ and suspension of the professional license. (Id., Art. 398) • Loss of property obtained directly or indirectly from criminal activity. (Decree-Law N° 1104, Art. 5) 	
Uruguay Uruguayan Penal Code.	✓	✗*	✗	✗	✗	<ul style="list-style-type: none"> • Individuals <p><u>Domestic Bribery</u></p> <ul style="list-style-type: none"> • Public officers may receive the following penalties: • Imprisonment of 6 months to 2 years. (Uruguayan Penal Code, Art. 158) • Special ban of rights for 2 to 6 years. (Id.) • Fine of \$U 300 to \$U 2,000 pesos (approximately \$11.20 	No mention.

						<p>to \$74.70 USD). (Id.)</p> <ul style="list-style-type: none"> • Fine of half of the two-thirds (2/3) of the fine established for the public official, for the person offering the bribe. (Id., Art. 159) • Imprisonment of the person offering a bribe will be based on a percentage of the public official's penalty. (Id.) 	
<p>Venezuela Law Against Corruption, enacted November 19, 2014.</p>	✓	✕*	✓	✓	✓	<ul style="list-style-type: none"> • Companies <u>Domestic Bribery</u> • Legal entities may as such be subject to criminal liability under Venezuelan law in some cases, but generally and in principle, such liability would be for individual officers or employees (managers and directors). (Law Against Corruption, Art. 2). • Individuals <u>Domestic Bribery</u> • Imprisonment from 3 to 10 years and a fine between 20% and 60% of bribe amount. (Law Against Corruption Art. 54) • Imprisonment from 6 	<p>Mitigating Factors:</p> <ul style="list-style-type: none"> • Lack of intent or negligence of the offender and where the offender has not been subject to sanctions in the past 5 years. (Id., Art. 35) • The penalties provided in Article 62 will be reduced by half if the person tries unsuccessfully to induce a public officer to commit the crimes referred in Article 62. (Id., Article 63). • If the bribe is made in a criminal prosecution by the wife, husband, ascendant, descendant, brother or sister of the accused or defendant, the penalties will be reduced by two-thirds (2/3). (Id., Art. 64)

						<p>months to 4 years for individuals that illegally use, with the help of a public official, public goods. (id. Art. 56)</p> <ul style="list-style-type: none"> • Imprisonment from 1 to 4 years for individuals that promise or give undue benefits to public officials for facilitation payments for administrative acts plus a fine of up to 50% of the amount paid or promised. (id. Art. 63) • Imprisonment from 4 to 8 years and a fine of up to 50% of the bribe amount when the bribe seeks the granting of public employment, subsidies, pensions, honors, contracts with the public administration or cause harm to any of the parts in an administrative, civil, criminal or any other process. If the bribed official is a judge and this results in the imprisonment of the other party in excess of 6 months, the imprisonment will be from 5 to 10 years. (id. Art. 64) • Imprisonment from 2 to 5 	
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						years if the individual conspires with a public official in order to execute contracts with the public administration. (id. Art 72) <ul style="list-style-type: none"> • Imprisonment from 2 to 4 years for individuals that exercise undue influence over public officials to facilitate obtaining acts or benefits from that public official. (id. Art 73) 	
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¹ The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (hereinafter “OECD Antibribery Convention”) entered into force February 15, 1999. It requires signatories to criminalize the bribery of foreign officials; establish liability for legal persons for the bribery of foreign officials; impose criminal sanctions comparable to domestic bribery sanctions or alternatively, impose “effective, proportionate and dissuasive” non-criminal sanctions (e.g., monetary fines); and provide prompt and effective legal assistance to other countries. The Latin American Parties to the OECD Antibribery Convention are: Argentina, Brazil, Chile, Colombia and Mexico.

² The *OAS Inter-American Convention against Corruption* (hereinafter “Inter-American Convention”) entered into force March 6, 1997. It promotes regional cooperation among the States Parties in areas such as mutual assistance, technical cooperation and extradition to ensure the effectiveness of measures to prevent, detect, punish and eradicate corruption in the performance of public functions. The Latin American Parties to the Inter-American Convention are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

³The *United Nations Convention against Corruption* entered into force December 14, 2005. It requires signatories to commit to prevent and criminalize corruption, to openly co-operate with one another in cases of cross-border corruption activities and to return stolen assets to countries of origin. The Latin American Parties to the UN Convention against Corruption are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

* This country has no law that specifically prohibits the bribery of a foreign public official, however the country is a signatory to both the UN Convention against Corruption and the Inter-American Convention.

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Note

All information and currency conversions are current as of June 17, 2015. Currency exchange rates, monthly tax units and minimum wages are subject to fluctuation.

Fine-Days in Bolivia, Dominican Republic, Mexico, Nicaragua and Peru are calculated based on the felony committed and the economic situation of the person being charged.

Chile: Monthly Tax Units (MTUs) is \$43,848.00 pesos (approximately \$68.80 USD).

Colombia: monthly minimum wage is \$644,350.00 pesos (approximately \$252.55 USD).

Costa Rica: minimum wage salary is ₡403,400.00 colons (approximately \$158.11 USD).

Mexico: the daily minimum wage in the Federal District is \$70.10 pesos (approximately \$4.55 USD).

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Courtesy of Rebekah J. Poston, Squire Patton Boggs (US) LLP



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