



Fighting Global Corruption: Business Risk Management

Information for Global Businesses & Organizations on
Navigating the International Anticorruption Environment



United States Department of State
Washington, DC 20520

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FIGHTING GLOBAL CORRUPTION: BUSINESS RISK MANAGEMENT



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U.S. DEPARTMENT OF STATE

In consultation and cooperation with the

U.S. DEPARTMENT OF COMMERCE

U.S. DEPARTMENT OF JUSTICE

U.S. DEPARTMENT OF THE TREASURY

U.S. OFFICE OF GOVERNMENT ETHICS

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

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**A MESSAGE FROM SECRETARY OF STATE
COLIN L. POWELL**

In implementing the President's vision for a robust and responsible foreign policy grounded in democratic values of freedom and market economics, all forms of corruption must be addressed.

Corruption results from a variety of economic, institutional, political, social and historical factors. It flourishes when democratic institutions are weak, laws are not enforced, political will is lacking, and when citizens and the media are not allowed to be partners in democracy. Corruption and unethical behavior by public officials are serious threats to basic principles of democratic government, undermine public confidence in democracy and threaten the rule of law.

Since the enactment of the Foreign Corrupt Practices Act of 1977, the United States has provided indispensable leadership so that business enterprise can compete fairly in the global economy. Today, rule of law and anticorruption initiatives are key foreign policy elements that promote integrity and confidence in both government institutions and in the global marketplace.

As we enter the 21st Century, more people throughout the world are rejecting the notion that corruption is inevitable. Success depends on impartial democratic institutions, open elections, and an unfettered access to information. Success also requires leadership by the private sector and active participation by citizens. Promoting integrity in government and the marketplace improves the global governance climate, nurtures long-term growth, and extends the benefits of prosperity to all people.

As Secretary of State, I am committed to fostering new synergies between economic goals and social progress in our foreign policy. This includes working with governments and enlisting the support of the private sector and non-governmental organizations in public-private partnerships to find solutions to the common challenges in our fight against corruption. We welcome the continued engagement and support of governments, business and civil society working together toward these important goals.

A handwritten signature in black ink, which appears to be "C. Powell". The signature is written in a cursive, flowing style.

Colin L. Powell

ACKNOWLEDGEMENTS

The drafting, preparation, and organization of this brochure necessarily involved the collective efforts of a very large number of dedicated people from government and the private sector.

I am particularly grateful to the National Security Council (NSC) and officials comprising the U.S. Government interagency working group on international anticorruption initiatives for their expertise and assistance in making this endeavor a reality. I am also profoundly appreciative of the important contributions made by private sector leaders in the fields of law, business, ethics, and accounting to review and comment at various points in the developmental process of this public diplomacy document. No doubt, their talents and guidance have made this brochure an extremely practical and useful resource.

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Rand Beers
Assistant Secretary of State
For International Narcotics and
Law Enforcement Affairs

“Sharpen Your Competitiveness.”

FIGHTING GLOBAL CORRUPTION: BUSINESS RISK MANAGEMENT*

“Sharpen Your Competitiveness.”

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Appendix A: Foreign Corrupt Practices Act - Antibribery Provisions.
(U.S. Department of Justice and U.S. Department of Commerce)

Appendix B: Websites Relevant to the FCPA, Anticorruption, Ethics,
Transparency, and Corporate Compliance Programs.

Appendix C: Guiding Principles For Fighting Corruption and Safeguarding
Integrity Among Justice and Security Officials.

Appendix D: Bibliography and Recommendations for Further Reading.

* This brochure is intended to provide a general description of corporate compliance programs, the U.S. Foreign Corrupt Practices Act (FCPA), and emerging global anticorruption frameworks. It is not intended to substitute for the advice of legal counsel on specific issues related to the FCPA. Moreover, material in this brochure is not intended to set forth the present enforcement intentions of the U.S. Department of Justice, the U.S. Securities and Exchange Commission (SEC), or any other U.S. government agency with respect to particular fact situations.

“An ounce of prevention is worth a pound of cure.”

“An ounce of prevention is worth a pound of cure.”

CORRUPTION: WHY IT MATTERS

Increasingly, in many parts of the world, companies and governments alike have recognized that corruption raises the costs and risks for doing business. Both sectors are working together to combat this problem and to enhance governance and transparency in global economies.

Corruption has a corrosive impact on both market opportunities overseas and the broader business climate. It also deters foreign investment, stifles economic growth and sustainable development, distorts prices, and undermines legal and judicial systems. More specifically, corruption is a problem in international business transactions, economic development projects, and government procurement activities.

From early 1994 through early 2001, the United States Government learned of significant allegations of bribery by foreign firms in over 400 competitions for international contracts valued at \$200 billion. The practice is global in scope, with firms from over 50 countries implicated in offering bribes for contracts in over 100 buyer countries during the seven-year period.

As a result of this problem, and to obtain a competitive advantage in the global markets of the 21st Century, a growing number of businesses are taking proactive steps to detect and prevent corruption.



DEVELOPING AN ANTICORRUPTION STRATEGY: DETECTION AND PREVENTION MEASURES FOR BUSINESSES

Since 1977, U.S. law has prohibited offers, promises, or payments to foreign officials, political parties, political officials, and candidates to secure business. A company running afoul of the Foreign Corrupt Practices Act (FCPA), or recently enacted anticorruption laws of other countries, may subject itself to criminal charges and substantial fines. Companies in these situations may also face loss of financing and insurance from national or international institutions and debarment from public contracting. Companies committing FCPA violations may also

sustain damage to their reputations and their ability to compete for international business. See [Appendix A](#) for more information on the *FCPA - Antibribery Provisions*.

Developing a comprehensive “anticorruption” compliance program as part of your company’s standard business practice — and that of your foreign subsidiaries — may limit your company’s risk and help avoid potential costs. An anticorruption compliance strategy can also help to protect your company’s reputation, minimize its liability, and maintain its long-term viability.

Not all companies’ needs are the same. A compliance program should be tailored to fit your company’s needs and circumstances (e.g., the type of management structure and size of company).

GENERAL ELEMENTS OF AN EFFECTIVE CORPORATE COMPLIANCE PROGRAM

An effective corporate compliance program is one that ultimately yields intended results: education, detection, and deterrence.

In structuring your corporate compliance program, you may want to consider the following general elements typically found in successful compliance programs.

- **Full support of upper management.** It is crucial that all of the elements of your company’s corporate compliance program receive the full support of upper management.
 - ◇ The corporate compliance program must be enforced at all levels within the company.
 - ◇ If upper level management does not take efforts to combat corruption seriously, then neither will employees.
- **Establish and adhere to a written corporate code of conduct.** Corporate directors, officers, employees, and agents put themselves at risk of incurring criminal or civil liability when they do not adhere to the FCPA or similar anticorruption laws of other countries.
 - ◇ A corporate code of conduct generally consists of a clearly written set of legal and ethical guidelines for employees to follow.
 - ◇ A comprehensive and clearly articulated code of conduct — as well as clear policies and procedures relative to

seeking guidance and making disclosures — may reduce the likelihood of actionable misconduct by your employees.

- ◇ It is important that a company's code of conduct be distributed to everyone in the company and, if necessary, translated into the languages of the countries abroad where your company operates.
- ◇ Finally, developing a code of conduct should not be the final act. The code must be effectively implemented and enforced at all times.
- **Establish an organizational compliance structure.** A compliance program may be run by one person or a team of compliance or ethics officers, depending on the size of your business.
 - ◇ Implementation and responsibility for a corporate compliance program by high-level management employees are vital for accountability.
 - ◇ Corporate compliance officers and committees can play key roles in drafting codes of conduct and educating and training employees on compliance procedures. Committee compliance members may include senior vice presidents for marketing and sales, auditing, operations, human resources, and other key offices.
 - ◇ Past experience has shown that empowering compliance officers with access to senior members of management and with the capacity to influence overall company policy on integrity issues can be of utmost importance.
- **Provide anticorruption training and education seminars.** The overall success of a compliance program depends on promoting legal and ethics training at every level of the company.
 - ◇ Regular ethics and compliance training programs should be held for all company employees, including board members and senior management officials.
 - ◇ Compliance programs should educate employees at all levels of the company about the FCPA and, when necessary, other countries' anticorruption laws.

- ◇ More specific legal and ethical training may be necessary for employees in high-risk areas.
 - ◇ A company should also take reasonable measures to communicate its values and procedures in an open environment to encourage participation and feedback.
 - ◇ Employees should be informed as to whom they should contact to report violations or ask questions.
 - ◇ Training materials which are both interactive and cost effective can help build employee support for a compliance program.
 - ◇ Most importantly, compliance issues should not be limited to training classes and the compliance team: compliance should be stressed as an integral part of the company's way of doing business.
- **Undertake due diligence.** Conducting prompt and thorough due diligence reviews is vital for ensuring that a compliance program is efficient and effective. Due diligence reviews are also key for preventing potential harm to the company's reputation.
 - ◇ Self-monitoring, monitoring of suppliers, and reports to the Board of Directors are all good tools for ensuring that a compliance program is being followed.
 - ◇ Moreover, from vetting new hires, agents, or business partners to assessing risks in international business dealings (e.g., mergers, acquisitions, or joint ventures), due diligence reviews can uncover questionable conduct and limit liability.
 - **Auditing and internal accounting controls.** Auditing and monitoring of systems of internal accounting controls contribute toward building an effective compliance program by the early detection of inaccuracies and misconduct (e.g., bribery, fraud, or other corporate malfeasance). Financial disclosure and reporting should be an integral part of a company's internal accounting controls.
 - ◇ Companies should have a clear and concise accounting policy that prohibits off-the-books accounts or inadequately identified transactions.
 - ◇ Companies should monitor their accounts for inaccuracies and for ambiguous or deceptive bookkeeping entries that may disguise illegal bribery

payments made by or on behalf of a company. The FCPA requires compliance with various accounting and record-keeping provisions. See [Appendix A](#) for more information on the *FCPA-Antibribery Provisions*.

- **Compliance mechanisms.** Enforcement of a company’s code of conduct is critical. Compliance officers should be accessible so that employees will feel comfortable discussing any of their compliance questions or concerns.
 - ◇ Creating reporting mechanisms with adequate policies on confidentiality and non-retaliation as well as other safeguards related to reporting is extremely important.
 - ◇ Whistleblowing protections, suggestion boxes, or “Help-lines” facilitate detection and reporting of questionable conduct.

“I think I may have made a mistake.”

An effective and non-threatening environment that encourages reporting and questions is important to assist employees and agents (especially those in the field) when confronted with questionable situations.

- ◇ Companies should provide guidance to assist employees and agents on how to cope with and resolve difficult situations. Such counseling not only protects the person in the field, it also protects the company.
- **Discipline.** A company should ensure that all employees understand that failure to comply with its compliance policy and procedures will result in disciplinary action, ranging from minor sanctions to more severe punishment, including termination of employment.
 - ◇ In instances of non-compliance, a company should take the necessary preventive steps to ensure that the questionable conduct does not recur in the future.

The measures listed above are general elements for developing an anticorruption corporate compliance program. Note that compliance programs’ emphasis on specific elements will vary from one company to another depending on the particular risks engendered by the company’s business (e.g., antitrust, healthcare fraud, or environmental issues).

You should seek the advice of legal counsel to learn more about what kind of corporate compliance program is most appropriate for your business.

ACCOUNTABILITY — GOOD GOVERNANCE IS GOOD FOR BUSINESSES AND GOVERNMENTS

“A responsible corporate citizen is also a citizen in the democratic process.”

The emphasis on good governance is timely. Globalization has put a premium on developing the incentives and adjustments necessary to attract investments and capital in foreign markets.

“Accountability, transparency, disclosure, protection of shareholders’ rights and building long-term value are the core values of good corporate governance. These values are also the pillars of a functioning market economy.”

You are the most effective advocate in the fight against corruption because you play a part in controlling jobs and investment in the global economy.

Good corporate governance procedures provide fair, reliable, and transparent rules that foster trust and confidence for doing business. As corporate citizens, businesspeople are members of and leaders in their communities. Your efforts to establish and adhere to corporate codes of conduct and personal ethical standards have a beneficial effect that ripples through the community. By working with governments and civil society to promote good governance in global economies, your company will help foster a synergy between economic goals and social progress.

Good governance principles for governments, such as those listed on page 9, also benefit their economies. Good governance reduces market volatility, encourages foreign direct investment and capital inflows, promotes sustainable economic growth, and produces a more equitable distribution of resources to the people (“fruits of development”).

While it is increasingly clear that corporate governance and sound business practices are generally good for business, good governance practices by governments also enhance the integrity of the markets and promote the integration of economies into the global trading system.

Thus, governments and businesses alike have a mutual interest in working together to strengthen public-private governance practices that promote and reward efficiency, innovation, and openness. Moreover, public and corporate governance principles are also important in nurturing the investment climate and building a more democratic rule of law-based society.

RECOGNIZING AND MAKING ANTICORRUPTION ISSUES PART OF THE BUSINESS-GOVERNMENT DIALOGUE

“Think Globally, Act Locally.”

As you conduct your business overseas, or if you are considering entering a new foreign market, let foreign government officials and business partners know that anticorruption and good governance policies will help their economy — and your company — sustain long-term growth.

Government policies, such as the following, that emphasize transparency, due process, and accountability, make for a strong anticorruption regime:

- Commercial codes that provide protection for international contracts as well as effective dispute settlement and arbitration methods.
- Law enforcement and judicial procedures that promote due process and the rule of law.
- Independent systems to promote and ensure the integrity and efficiency of governmental agencies.
- Civil service reforms and competitive wages for government employees.
- Integrity of capital markets and financial disclosure on the issuance of securities.
- Predictable and transparent administrative and bidding processes in areas such as procurement and privatization.
- Improved and standardized public accounting, auditing, and management systems.
- Effective bankruptcy and insolvency laws.
- Limits on discretionary authority for officials who perform inspections or audits, oversee procurement, grant licenses and permits, or provide final approval for contracts or projects.
- Oversight mechanisms and appellate remedies to challenge arbitrary or unlawful actions.
- Protection for whistleblowers and the media.
- Disclosure of and access to public records and information.
- Encouragement of civil society’s participation in implementing these policies and anticorruption efforts.

PROMOTING GOOD BUSINESS PRACTICES IN TRANSITIONAL ECONOMIES

One way to achieve increased participation of the private sector in the fight against corruption is through promoting business integrity as well as accountability and transparency in commercial relations between private firms and government authorities. Written codes of conduct and professional standards, even if adopted by only a handful of companies, can influence and alter certain behavior and attitudes over time.

Implementation of codes of conduct and professional standards can also help build public trust and confidence in business and political institutions, lead to greater public awareness and support of ethical behavior, and encourage the development of a business culture that is based on ethical values.

The U.S. Department of Commerce, in cooperation with the U.S.-Russia Business Development Committee and the Russian Chamber of Commerce and Industry, has developed *Basic Guidelines for Codes of Business Conduct* to promote good business practices and ethical behavior in commercial relations between private firms as well as with government officials.

The *Basic Guidelines* are meant to serve as a foundation for companies to develop and adopt their own codes of conduct taking into account applicable laws, regulations, and other circumstances, such as the size and structure of the businesses.

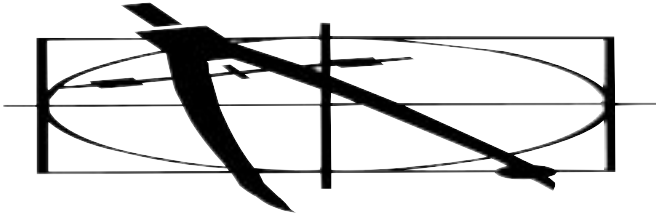
Among the general principles and standards outlined in the Basic Guidelines are:

- Principles in Personal and Professional Relations
- Corporate Governance: Relationships with Shareholders
- Relationship with Employees
- Relationship with Other Enterprises
- Relationship with the Global Community
- Relationship with Government Authorities
- Proper Checks and Balances
- Prevention of Extortion and Bribery
- Creation of a Culture that Fosters Sound Business Standards and Corporate Practices

One of the U.S. Department of Commerce's key priorities is to work with the OECD to develop an international set of guidelines for promoting good business practices in transitional economies.

The Basic Guidelines for Codes of Business Conduct (described above) can be found in English on www.mac.doc.gov and in English and Russian on www.bisnis.doc.gov/bisnis/country/rusfed.htm.

U.S. EFFORTS TO COMBAT GLOBAL CORRUPTION: LEVELING THE PLAYING FIELD



Business thrives on competition. U.S. companies and workers can compete with the best in the global marketplace because of their drive, innovation, and quality products and services. However, their success depends heavily on their ability to compete on a level playing field. Bribery and corruption tilt the playing field and create unfair advantages for those willing to engage in unethical or illegal behavior. Corrupt practices penalize companies that play fair and seek to win contracts through the quality and price of their products and services.

In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), effectively outlawing offers, promises, and payments by U.S. firms to foreign officials, political parties, party officials and candidates to secure business advantage. See [Appendix A](#) for more information on the *FCPA — Antibribery Provisions*.

Since then, the United States has been trying to level the playing field by encouraging other industrialized countries to take similar steps — and these efforts are finally paying off. There has been real progress in building an international coalition to fight bribery and public corruption so that all businesses may fairly compete in the global market place.

One significant milestone is the Organization for Economic Cooperation and Development’s (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, commonly known as the OECD Bribery Convention, which entered into force in February 1999.

The OECD Bribery Convention, signed by 34 countries, marks a sea change in the fight against corruption by obligating its parties to criminalize the bribery of foreign public officials in the conduct of international business.

The OECD Bribery Convention also requires parties to: apply “effective, proportionate and dissuasive criminal penalties” to those who bribe; establish liability of “legal persons” (i.e., corporations, partnerships, and similar business entities) or impose comparable civil sanctions or fines; make bribery a predicate offense for money laundering legislation; improve accounting procedures; prohibit off-the-books accounts; and

provide mutual legal assistance and extradition in cases falling under the Convention.

Significantly, the OECD Bribery Convention establishes a mutual evaluation process within the OECD to monitor each participating country's implementation of the obligations under the Convention and enforcement of relevant national laws.

Since corruption is an enduring phenomenon that can be controlled but never eliminated, processes for mutual evaluation can be an effective means to maintain norms for government actions globally and regionally, and they can provide the political incentive for governments to implement and enforce those actions.

Further information relating to the OECD Bribery Convention can be found at www.oecd.org/daf/nocorruption/index.htm, or www.state.gov/www/issues/economic/bribery.html, or www.ita.doc.gov/legal.

KEY GOALS OF U.S. INTERNATIONAL ANTICORRUPTION POLICY:

- Full ratification, implementation, and enforcement of the OECD Bribery Convention by all signatories.
 - Full ratification, implementation, and enforcement of the Inter-American Convention Against Corruption by all hemispheric partners.
 - Nurture stability in democratic institutions and strengthen the rule of law in transitional economies.
 - Promote global and regional anticorruption norms and initiatives that deter and punish corruption.
 - Ensure transparency in government procurement procedures to enhance openness, disclosure, and predictability.
 - Develop ethical and administrative codes of conduct that promote the highest levels of professionalism and integrity in government.
 - Engage the business community to join the U.S. and other governments in promoting corporate governance, transparency, and integrity in business operations.
 - Foster an active civil society that is involved in participatory governance and upholds democratic principles.
-

THE EMERGING GLOBAL ANTICORRUPTION ENVIRONMENT



Many international organizations have been making strides in addressing international bribery in business transactions, official public corruption, and transparency issues.

In addition to the OECD, the Organization of American States (OAS), the Council of Europe (COE), the Stability Pact for South Eastern Europe, the Organization for Security and Cooperation in Europe (OSCE), the Asia Pacific Economic Cooperation (APEC) forum, the Global Coalition for Africa (GCA) and the United Nations have launched a variety of anticorruption and transparency initiatives.

These initiatives represent important steps in building coalitions to combat corruption. For more than a decade, the U.S. government has worked cooperatively with the private sector and international organizations on these and other anticorruption initiatives.

U.S. and international legal, business and accounting associations and non-governmental organizations (NGOs) — such as the American Bar Association (ABA), the U.S. Chamber of Commerce, the International Chamber of Commerce (ICC), the Ethics Officer Association (EOA), the Committee of Sponsoring Organizations (COSO), and Transparency International (TI) — have played key advisory roles in the development of various anticorruption initiatives. We will continue to work with these and other private sector groups to provide and receive guidance on improving the climate of governance worldwide.

With respect to the emerging international anticorruption environment, the unifying concept in all of the global and regional processes is that effective action to prevent, detect, and punish corruption must be taken by each individual government. The international community can advance this process by raising the visibility and political profile of these efforts.

The international business community and NGOs are working together to identify clear and objective actions of what should be expected of governments, what governments may expect of each other, and what ultimately their citizens should, through democratic processes, require of their governments.

In working with other nations, the United States continues to encourage a broad range of global and regional anticorruption and transparency initiatives. Such measures strengthen the political will for cooperation on building capacities for action against corruption and for developing effective measures and practices to promote public integrity.

AFRICA

In February 1999, under the auspices of the Global Coalition for Africa (GCA), 11 African countries adopted 25 anticorruption principles that encourage implementation of common standards at the national level, as well as joint action between and among countries. These principles could also form the basis of more formal cooperative frameworks at the regional or subregional levels.

THE AMERICAS

At the 1994 Miami Summit of the Americas, the 34 leaders of the Western Hemisphere called for negotiations of an hemispheric convention against corruption. In March 1996, under the auspices of the Organization of American States (OAS), the Inter-American Convention Against Corruption (“Inter-American Convention”) was adopted. The U.S. deposited its instrument of ratification with the Secretary General of the OAS in September 2000. The Inter-American Convention covers corrupt practices on both the national and international level. Furthermore, it commits nations to reforming their criminal codes to bring domestic law into compliance with the convention. Its focus on preventive measures was unprecedented. The State Parties to the Inter-American Convention are considering an OAS-recommended monitoring mechanism, which they expect to adopt and begin implementing in 2001.

ASIA-PACIFIC

The Asia Pacific Economic Cooperation (APEC) forum is promoting economic reforms that enhance governance and transparency and create better investment and business climates to attract foreign direct investment. Its work builds on existing commitments of APEC Leaders (Presidents and Prime Ministers) and a broad range of programs in APEC, including in the areas of investment, customs procedures, competition policy, government procurement, corporate governance, and regional financial markets. Many programs involve the private sector as integral participants in developing, carrying out, and assessing activities aimed at increasing transparency and promoting corporate governance.

EUROPE

The Council of Europe (COE) is active in a number of anticorruption initiatives and has adopted several conventions, including both Criminal

and Civil Law Conventions on Corruption, which were opened for signature in 1999. The U.S. signed the Criminal Law Convention on October 10, 2000. The Criminal Law Convention on Corruption is broad in scope, requiring parties to criminalize bribery (both giving and receiving) of public officials and private persons, domestic and foreign. Implementation of the Convention will be monitored by GRECO, the Group of States Against Corruption, which will also monitor compliance with the “20 Guiding Principles” adopted in 1997 by the COE’s Council of Ministers. The European Union (EU), the Organization for Security Cooperation in Europe (OSCE) and the Stability Pact for South Eastern Europe also are working on various anticorruption initiatives. *See Appendix B for more information.*

WORLD TRADE ORGANIZATION

Through binding commitments to ensure transparency and due process in a wide range of government activities relating to international trade, the WTO makes an important contribution to international efforts to combat bribery and corruption. Most WTO members have endorsed efforts to conclude a multilateral agreement on transparency in government procurement, under which all 140 members would make binding international commitments to ensure transparency and predictability in their government procurement procedures. Similarly, an initiative on trade facilitation would help eliminate irregularities in WTO members’ customs regimes, another area of economic activity that is frequently susceptible to corrupt practices.

UNITED NATIONS

In 1999, the G-8 Koln Communiqué applauded the results of the First Global Forum on Fighting Corruption (see below) and called on the United Nations, in the context of the convention against transnational organized crime, to include an obligation to make corruption of domestic public officials a criminal offense. The United Nations Convention Against Transnational Organized Crime was completed, approved by the UN General Assembly, and opened for signature at a high-level meeting in Palermo, Italy in December 2000. Also in December 2000, the UN General Assembly approved a resolution to begin the process for negotiations of a new UN global instrument against corruption. The U.S. is consulting with other governments on these future negotiations, for example through the G-8, Global Forum II, and a UN experts group.

GLOBAL FORUM ON FIGHTING CORRUPTION

The First Global Forum on Fighting Corruption and Safeguarding Integrity, hosted by the United States in February 1999, has added momentum to our broader anticorruption campaign. Participants from 90 governments agreed to a final conference declaration calling on governments to adopt principles and effective practices to fight corruption,

to promote transparency and good governance, and to create ways to assist each other through mutual evaluation. At the conclusion of the First Global Forum, the Netherlands agreed to host the Second Global Forum in 2001, and South Korea agreed to host the Third Global Forum in 2003. The Second Global Forum will produce a Declaration with “building blocks” to facilitate further discussion for a future UN Convention Against Corruption (see above). The U.S. Government continues to be committed to the success of this important international anticorruption initiative.

The First Global Forum identified a set of 12 Guiding Principles that encompass the goals or purposes that a national anticorruption effort must address. These Guiding Principles include aspects relating to:

- Laws prohibiting the full range of corruption offenses, with sanctions and remedies sufficient to deter corrupt activities;
- Investigative and enforcement institutions with the impartiality, powers, and resources to detect, investigate, and prosecute violations of those laws;
- Codes of conduct, public management, and personnel measures and procedures that promote the integrity of public officials;
- Freedom of the media and public to receive and impart information on corruption matters and to bring complaints of suspected corruption;
- Enhanced research and public discussion of all aspects of upholding integrity and preventing corruption among public officials; and
- International cooperation in all aspects of this issue.

The most fundamental conclusion from the First Global Forum is that action against corruption must encompass all political, administrative, judicial, and civil society elements of a nation. National anticorruption actions must comprehensively respond to all aspects of these Guiding Principles if they are to succeed. See *Appendix C* for a copy of the “Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice And Security Officials.” Information about the Global Forum process can be found at <http://www.gfcorruption.org>.

INTERNATIONAL FINANCIAL INSTITUTIONS

The World Bank and the International Monetary Fund (IMF) have determined that corruption is a serious deterrent to economic growth and financial stability and must be addressed in the context of economic and financial evaluations and assistance programs.

The World Bank and the regional development banks, especially in Asia and Africa, have established explicit anticorruption policies aimed at helping countries to confront and prevent corruption through appropriate economic and civil service reforms.

All of the official development banks, led by the World Bank, are working together to agree on standard procurement bidding documents and rules to ensure fairness to all competing suppliers and efficiency in the use of public sector funds.

The IMF has begun to integrate identification of corruption problems into its standard evaluations. In selected cases, the IMF and the World Bank have postponed, denied, or suspended assistance to countries where endemic corruption was adversely affecting financial stabilization or development programs and where governments were not prepared to acknowledge and deal with those problems.

In the wake of the recent Asian financial crisis and related problems in Latin America and elsewhere, the IMF has been pushing for governments to increase transparency in reporting economic indicators to allow investors to better judge the strength of their respective economies.

INTERNATIONAL CHAMBER OF COMMERCE

The International Chamber of Commerce (ICC), the world business organization, promotes an open international trade and investment system and the market economy. The ICC makes model rules to govern the conduct of business across borders. In 1977, the ICC issued “Rules of Conduct to Combat Extortion and Bribery.” The Rules were revised in 1996, and the ICC reissued them unchanged in 1999. In the spring of 1999, the ICC also published a manual of best corporate practices to accompany the rules of conduct and to provide guidance for compliance with the OECD Bribery Convention. The ICC Rules, which promote integrity in business transactions, are intended as a method of self-regulation by international business. *For more information on the ICC Rules and ICC “Fighting Bribery Manual,” see [Appendix D](#), or the ICC homepage, at <http://www.iccwbo.org/index.asp>.*

WORLD CUSTOMS ORGANIZATION

Established in 1952, the World Customs Organization (WCO), headquartered in Brussels, is working to establish integrity in customs administrations. In efforts to meet the challenges of the modern business environment and adapt to changing circumstances, the WCO, representing 151 Member Governments, establishes, maintains, supports, and promotes international instruments for the harmonization and uniform application of simplified systems and effective customs systems and procedures. Due to the fact that customs play a role in international

trade transactions and that the presence of corruption can destroy the legitimacy of a customs administration and severely impact a nation's economy, the WCO has developed an Integrity Action Plan to address corruption within customs administrations.

IACC & TRANSPARENCY INTERNATIONAL

Transparency International (TI) is a non-profit, Berlin-based advocacy organization working to curb corruption in international business transactions and other areas. Through its national chapters in over eighty countries, TI encourages national and local governments to implement effective anticorruption laws, policies, and programs. TI serves as Secretariat for the biennial International Anti-Corruption Conference (IACC) that brings together practitioners and academics to exchange information and ideas about the fight against corruption. The 10th IACC will take place in Prague, Czech Republic (October, 2001) and the 11th IACC in Seoul, South Korea (2003). TI also works at the multilateral level with the World Bank, IMF, OAS, OECD, APEC, GCA, and other public organizations. The annual TI Corruption Perceptions Index, which reflects perceived levels of corruption in 90 countries, continues to generate widespread attention. TI has also launched a Bribe Payers Index, which ranks leading exporting countries in terms of the degree to which their corporations are perceived to be paying bribes abroad. *For more information about TI or the IACC, please see [Appendix B](#).*

GLOBAL CORPORATE GOVERNANCE FORUM

In 1999, the World Bank and OECD launched the Global Corporate Governance Forum which aims to promote and improve corporate governance on a worldwide basis. Among the lessons learned in recent and past international financial crises is that good corporate governance is an essential foundation for a well-functioning market economy, for enhancing individual countries' long-term economic performance, and for strengthening the international financial system. The Global Corporate Governance Forum provides a framework for international cooperation and for creating synergies for the design and implementation of joint or individual projects by participating countries and institutions.

Through complementary OECD-World Bank regional roundtables, the initiative brings together leaders from government, private sector, international financial institutions, international organizations, NGOs and other stakeholders to foster cooperation on identifying key areas for technical assistance, developing effective corporate governance systems and on helping create the necessary legal and regulatory infrastructure to support them. *For more information on the Global Corporate Governance Forum or OECD Principles of Corporate Governance, please see [Appendix B](#).*

THE ROLE OF CIVIL SOCIETY*

The hallmark of a free society is the ability of individuals to associate with other like-minded citizens, associations, and organizations, express their views, petition their governments, and accept the rule of law.

The role of civil society as a catalyst for fighting corruption and mobilizing pressure on governments and multilateral governmental organizations to adopt public sector reforms cannot be underestimated.

In many parts of the world, business is partnering with civil society to prevent corrupt practices, strengthen public institutions, and foster an anticorruption culture in society.

The U.S. Government continues to work and support the creation of a viable civil society where it does not exist and to strengthen the capacity and opportunity of public-private partnerships to fight corruption.

Changing Attitudes: Engaging Civil Society in the Fight Against Corruption

U.S. Agency for International Development (USAID) programs seek to raise awareness about the costs of corruption, decrease tolerance for corrupt behavior, and change the expected norms of ethical behavior. By providing training and other forms of support, USAID encourages the growth of active, public policy-oriented civil society groups that will monitor governmental integrity, bring corruption issues onto the public agenda, and actively promote the twin concepts of transparency and accountability.

Examples of USAID's Public-Private Partnerships: USAID's Bureau for Africa's regional African Trade and Investment Program supported the Confederation of Mozambique's Business Associations in its efforts to reduce red tape and to provide an effective forum for the private sector to examine policy issues. Over the past year, this activity has resulted in the passage of a new industrial law and revisions in the industrial and commercial licensing regulations that greatly simplified the registration process, the abolition of import and export controls, and the transfer to a single agency of all responsibility for import and export controls. Another USAID-organized public-private partnership involves the Ukrainian *oblast* in Donetsk in which the Partnership for Integrity has worked with the Oblast Coordinating Committee to introduce administrative reforms that can reduce corruption, such as streamlining licensing procedures for businesses.

(Source: "Promoting Transparency and Accountability: USAID's Anticorruption Experience." Center for Democracy and Governance, USAID, 2000.)

* The term "civil society" usually refers to diverse citizens, associations, and non-governmental organizations (NGOs) that unite to promote causes or issues of mutual interest and to influence decision-making processes. These include, for example, professional associations, civic education groups, religious organizations, bar associations, business councils and labor federations, human rights and women's rights groups, journalists and the media, and other monitoring groups and organizations.

THE ROAD AHEAD: CORRUPTION AND GOOD GOVERNANCE

The fight against corruption remains among the most significant international issues facing the post-Cold War world. While some progress is being achieved globally in this battle, new challenges arise each day.

In many regions, the public outcry against corruption has influenced the outcome of elections. Corruption has also been a factor in global financial crises and continues to be an impediment to trade liberalization and sustainable development. Perhaps the most pernicious effect of corruption is when it undermines the fragile institutions that safeguard democracy and foster market economies.

The lessons learned from the international community's collective governance experiences and hardships present a compelling case that corrupt practices and the erosion of integrity not only destabilize economies and democratic institutions, but also directly and adversely impact those who stand to benefit the most from good governance. As a recent World Bank study illustrates, good governance helps achieve a better quality of economic growth for countries around the world ("higher income growth, national wealth and social achievements").* This is particularly true in countries that have efficient markets, strong oversight institutions, where the rule of law is enforced, and where civil society has a voice and actively participates in sustainable development.

Because corruption knows no national boundaries, the international community must engage in strategic planning and coordinate transnational approaches. A global consensus is emerging that governance and anticorruption capacity-building must incorporate a more holistic approach that focuses on comprehensively integrating checks and balances, preventive measures, internal controls, effective law enforcement, education awareness campaigns, and public-private partnerships. The rule of law must be reinforced by the dynamic and participatory democratic activities of business, civil society, and NGO groups. The media also must have an unfettered voice in this process.

Working together, the international community can develop a more stable and predictable investment climate by reducing the level of corruption. A strong anticorruption regime and good governance practices allow decision-makers in both the private and public sectors to limit their financial risk, develop effective warning systems, nurture long-term growth, and minimize future economic and political destabilization situations.

* See [Appendix D](#) for further information about The World Bank's "Quality of Growth" report.

REPORTING CORRUPTION

In many parts of the world, businesses are becoming more proactive in asking their respective home and host governments to assist their efforts to create, through diplomatic channels, anticorruption mechanisms to root out systemic corruption.

If you, or your company, have encountered corrupt practices in a particular country, or have been particularly disadvantaged by bribery perpetrated by another competitor or by another foreign business entity, or if a foreign official solicits a bribe from you, you should inform the appropriate economic or commercial officer or section at the local U.S. Embassy or Consulate.

You also can report this information to the “Bribery Hotline,” maintained by the U.S. Department of Commerce’s Trade Compliance Center, (202) 482-3723, or on the Internet Website at www.mac.doc.gov/tcc.

Questions regarding the U.S. Foreign Corrupt Practices Act (FCPA) may be directed to the Fraud Section of the U.S. Department of Justice, (202) 514-7023 (or via e-mail at FCPA.Fraud@usdoj.gov), and/or the appropriate economic or commercial officer at the local U.S. Embassy or Consulate. See [Appendix A](#) for more information on the *FCPA-Antibribery Provisions*.

General guidance to U.S. exporters about international developments concerning the FCPA and OECD Bribery Convention is also provided by the Office of Chief Counsel for International Commerce, U.S. Department of Commerce, at (202) 482-0937 and on its website at www.ita.doc.gov/legal.

For questions relating to the U.S. negotiation of the OECD Bribery Convention, you can call the U.S. Department of State, Bureau of Economic and Business Affairs, Office of Investment Affairs, (202) 736-4365.

Inquiries relating to the coordination of the U.S. Government’s general anticorruption efforts and implementation of regional corruption frameworks should be directed to the U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs, (202) 647-0457.

For other information and appropriate points of contact, please see list of U.S. Government Websites in [Appendix B](#).

APPENDICES

FOREIGN CORRUPT PRACTICES ACT (FCPA) ANTIBRIBERY PROVISIONS*

The following information is intended to provide a general description of the FCPA and is not intended to substitute for the advice of private counsel on specific issues related to the FCPA. Moreover, this information is not intended to set forth the present enforcement intentions of the U.S. Department of Justice, the U.S. Securities and Exchange Commission (SEC), or any other U.S. government agency with respect to particular fact situations.

INTRODUCTION

The 1988 Trade Act directed the Attorney General to provide guidance concerning the Department of Justice’s enforcement policy with respect to the Foreign Corrupt Practices Act of 1977 (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, to potential exporters and small businesses that are unable to obtain specialized counsel on issues related to the FCPA. The guidance is limited to responses to requests under the Department of Justice’s Foreign Corrupt Practices Act Opinion Procedure (described below) and to general explanations of compliance responsibilities and potential liabilities under the FCPA. The following information constitutes the Department of Justice’s general explanation of the FCPA.

U.S. firms seeking to do business in foreign markets must be familiar with the FCPA. In general, the FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business. The Department of Justice is the chief enforcement agency, with a coordinate role played by the Securities and Exchange Commission (SEC). The Office of General Counsel of the Department of Commerce also answers general questions from U.S. exporters concerning the FCPA’s basic requirements and constraints.

BACKGROUND

As a result of SEC investigations in the mid-1970s, over 400 U.S. companies admitted making questionable or illegal payment in excess of \$300 million to foreign government officials, politicians, and political parties. The abuses ran the gamut from bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharged certain ministerial or clerical duties. Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system.

The FCPA was intended to have and has had an enormous impact on the way American firms do business. Several firms that paid bribes to foreign officials

* Reprinted from “Foreign Corrupt Practices Act — Antibribery Provisions,” a brochure published by the U.S. Department of Justice (www.usdoj.gov/criminal/fraud/fcpa.html) and U.S. Department of Commerce (www.ita.doc.gov/legal/fcparev.html).

have been the subject of criminal and civil enforcement actions, resulting in large fines and suspension and debarment from federal procurement contracting, and their employees and officers have gone to jail. To avoid such consequences, many firms have implemented detailed compliance programs intended to prevent and to detect any improper payments by employees and agents.

Following the passage of the FCPA, the Congress became concerned that American companies were operating at a disadvantage compared to foreign companies who routinely paid bribes and, in some countries, were permitted to deduct the cost of such bribes as business expenses on their taxes. Accordingly, in 1988, the Congress directed the Executive Branch to commence negotiations in the Organization of Economic Cooperation and Development (OECD) to obtain the agreement of the United States' major trading partners to enact legislation similar to the FCPA. In 1997, almost ten years later, the United States and thirty-three other countries signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United States ratified this Convention and enacted implementing legislation in 1998. See Convention and Commentaries on the DOJ websites listed in [Appendix B](#).

The antibribery provisions of the FCPA make it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to a foreign official for the purpose of obtaining or retaining business for or with, or directing business to, any person. Since 1998, they also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

The FCPA also requires companies whose securities are listed in the United States to meet its accounting provisions. See 15 U.S.C. § 78m. These accounting provisions, which were designed to operate in tandem with the antibribery provisions of the FCPA, require corporations covered by the provisions to make and keep books and records that accurately and fairly reflect the transactions of the corporation and to devise and maintain an adequate system of internal accounting controls. The information below discusses only the antibribery provisions.

ENFORCEMENT

The Department of Justice is responsible for all criminal enforcement and for civil enforcement of the antibribery provisions with respect to domestic concerns and foreign companies and nationals. The SEC is responsible for civil enforcement of the antibribery provisions with respect to issuers.

ANTIBRIBERY PROVISIONS

Basic Prohibitions

The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. With respect to the basic prohibition, there are five elements which must be met to constitute a violation of the Act:

- A. **Who** — The FCPA potentially applies to *any* individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf

of a firm. Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate the antibribery provisions or if they conspire to violate those provisions.

Under the FCPA, U.S. jurisdiction over corrupt payments to foreign officials depends upon whether the violator is an “issuer,” a “domestic concern,” or a foreign national or business.

An “issuer” is a corporation that has issued securities that have been registered in the United States or who is required to file periodic reports with the SEC.

A “domestic concern” is any individual who is a citizen, national, or resident of the United States, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of a State of the United States, or a territory, possession, or commonwealth of the United States.

Issuers and domestic concerns may be held liable under the FCPA under *either* territorial or nationality jurisdiction principles. For acts taken within the territory of the United States, issuers and domestic concerns are liable if they take an act in furtherance of a corrupt payment to a foreign official using the U.S. mails or other means or instrumentalities of interstate commerce. Such means of instrumentalities include telephone calls, facsimile transmissions, wire transfers, and interstate or international travel. In addition, issuers and domestic concerns may be held liable for any act in furtherance of a corrupt payment taken *outside* the United States. Thus, a U.S. company or national may be held liable for a corrupt payment authorized by employees or agents operating entirely outside the United States, using money from foreign bank accounts, and without any involvement by personnel located within the United States.

Prior to 1998, foreign companies, with the exception of those who qualified as “issuers,” and foreign nationals were not covered by the FCPA. The 1998 amendments expanded the FCPA to assert territorial jurisdiction over foreign companies and nationals. A foreign company or person is now subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States. There is, however, no requirement that such act make use of the U.S. mails or other means or instrumentalities of interstate commerce.

Finally, U.S. parent corporations may be held liable for the acts of foreign subsidiaries where they authorized, directed, or controlled the activity in question, as can U.S. citizens or residents, themselves “domestic concerns,” who were employed by or acting on behalf of such foreign-incorporated subsidiaries.

- B. Corrupt Intent — The person making or authorizing the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his official position to direct business wrongfully to the payer or to any other person. You should note that the FCPA does not require that a corrupt act *succeed* in its purpose. The *offer or promise* of a corrupt

payment can constitute a violation of the statute. The FCPA prohibits any corrupt payment intended to *influence* any act or decision of a foreign official in his or her official capacity, to *induce* the official to do or omit to do any act in violation of his or her lawful duty, to *obtain* any improper advantage, or to *induce* a foreign official to use his or her influence improperly to affect or influence any act or decision.

- C. Payment — The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value.
- D. Recipient — The prohibition extends only to corrupt payments to a *foreign official*, a *foreign political party* or *party official*, or any *candidate* for foreign political office. A “foreign official” means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity.

You should consider utilizing the Department of Justice’s Foreign Corrupt Practices Act Opinion Procedure for particular questions as to the definition of a “foreign official,” such as whether a member of a royal family, a member of a legislative body, or an official of a state-owned business enterprise would be considered a “foreign official.” In addition, you should consult the list of public international organizations covered under the FCPA that is available on the Department of Justice’s FCPA website. See Appendix B.

The FCPA applies to payments to *any* public official, regardless of rank or position. The FCPA focuses on the *purpose* of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment, and there are exceptions to the antibribery provision for “facilitating payments for routine governmental action” (see below).

- E. Business Purpose Test — The FCPA prohibits payments made in order to assist the firm in *obtaining* or *retaining business* for or with, or *directing business* to, any person. The Department of Justice interprets “obtaining or retaining business” broadly, such that the term encompasses more than the mere award or renewal of a contract. It should be noted that the business to be obtained or retained does not need to be with a foreign government or foreign government instrumentality.

THIRD PARTY PAYMENTS

The FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. *The term “knowing” includes conscious disregard and deliberative ignorance.* The elements of an offense are essentially the same as described above, except that in this case the “recipient” is the intermediary who is making the payment to the requisite “foreign official.”

Intermediaries may include joint venture partners or agents. To avoid being liable for corrupt third party payments, U.S. companies are encouraged to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and

representatives. Such due diligence may include investigating potential foreign representatives and joint venture partners to determine if they are in fact qualified for the position, whether they have personal or professional ties to the government, the number and reputation of their clientele, and their reputation with the U.S. Embassy or Consulate and with local bankers, clients, and other business associates.

In addition, in negotiating a business relationship, the U.S. firm should be aware of so-called “red flags,” i.e., unusual payment patterns or financial arrangements, a history of corruption in the country, a refusal by the foreign joint venture partner or representative to provide a certification that it will not take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official and not take any act that would cause the U.S. firm to be in violation of the FCPA, unusually high commissions, lack of transparency in expenses and accounting records, apparent lack of qualifications or resources on the part of the joint venture partner or representative to perform the services offered, and whether the joint venture partner or representative has been recommended by an official of the potential governmental customer.

You should seek the advice of counsel and consider utilizing the Department of Justice’s Foreign Corrupt Practices Act Opinion Procedure for particular questions relating to third party payments.

PERMISSIBLE PAYMENTS AND AFFIRMATIVE DEFENSES

The FCPA contains an explicit exception to the bribery prohibition for “facilitating payments” for “routine governmental action” and provides affirmative defenses which can be used to defend against alleged violations of the FCPA.

Facilitating Payments for Routine Governmental Actions

There is an exception to the antibribery prohibition for payments to facilitate or expedite performance of a “routine governmental action.” The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products; and scheduling inspections associated with contract performance or transit of goods across country.

Actions “similar” to these are also covered by this exception. If you have a question about whether a payment falls within the exception, you should consult with counsel. You should also consider whether to utilize the Justice Department’s Foreign Corrupt Practices Opinion Procedure, described below.

“Routine governmental action” does not include any decision by a foreign official to award new business or to continue business with a particular party.

Affirmative Defenses

A person charged with a violation of the FCPA’s antibribery provisions may assert as a defense that the payment was lawful under the written laws of the

foreign country or that the money was spent as part of demonstrating a product or performing a contractual obligation.

Whether a payment was lawful under the written laws of the foreign country may be difficult to determine. You should consider seeking the advice of counsel or utilizing the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure when faced with an issue of the legality of such a payment.

Moreover, because these defenses are "affirmative defenses," the defendant is required to show in the first instance that the payment met these requirements. The prosecution does not bear the burden of demonstrating in the first instance that the payments did not constitute this type of payment.

SANCTIONS AGAINST BRIBERY

Criminal

The following criminal penalties may be imposed for violations of the FCPA's antibribery provisions: corporations and other business entities are subject to a fine of up to \$2,000,000; officers, directors, stockholders, employees, and agents are subject to a fine of up to \$100,000 and imprisonment for up to five years. Moreover, under the Alternative Fines Act, these fines may be actually quite higher — the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt payment. You should also be aware that fines imposed on individuals may not be paid by their employer or principal.

Civil

The Attorney General or the SEC, as appropriate, may bring a civil action for a fine of up to \$10,000 against any firm *as well as* any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm, who violates the antibribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or (ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from \$5,000 to \$100,000 for a natural person and \$50,000 to \$500,000 for any other person.

The Attorney General or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the antibribery provisions.

Other Governmental Action

Under guidelines issued by the Office of Management and Budget, a person or firm found in violation of the FCPA may be barred from doing business with the Federal government. *Indictment alone can lead to suspension of the right to do business with the government.* The President has directed that no executive agency shall allow any party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded that party from participation in a procurement or nonprocurement activity.

In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses; the SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA; the Commodity Futures Trading Commission and the Overseas Private Investment Corporation both provide for possible suspension or debarment from agency programs for violation of the FCPA; and a payment made to a foreign government official that is unlawful under the FCPA cannot be deducted under the tax laws as a business expense.

Private Cause of Action

Conduct that violates the antibribery provisions of the FCPA may also give rise to a private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), or to actions under other federal or state laws. For example, an action might be brought under RICO by a competitor who alleges that the bribery caused the defendant to win a foreign contract.

GUIDANCE FROM THE GOVERNMENT

The Department of Justice has established a Foreign Corrupt Practices Act Opinion Procedure by which any U.S. company or national may request a statement of the Justice Department's present enforcement intentions under the antibribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure may be found at 28 CFR Part 80. Under this procedure, the Attorney General will issue an opinion in response to a specific inquiry from a person or firm within thirty days of the request. (The thirty-day period does not run until the Department of Justice has received all the information it requires to issue the opinion.) Conduct for which the Department of Justice has issued an opinion stating that the conduct conforms with current enforcement policy will be entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA.

Copies of releases issued regarding previous opinions are available on the Department of Justice's FCPA website (*See Appendix B* below).

For further information from the Department of Justice about the FCPA and the Foreign Corrupt Practices Act Opinion Procedure, contact Peter B. Clark, Deputy Chief, or Philip Urofsky, Trial Attorney, Fraud Section, Criminal Division, U.S. Department of Justice, P.O. Box 28188, McPherson Square, Washington, D.C. 20038, (202) 514-7023.

Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information from the Department of Commerce about the FCPA, contact Eleanor Roberts Lewis, Chief Counsel for International Commerce, or Arthur Aronoff, Senior Counsel, Office of the Chief Counsel for International Commerce, U.S. Department of Commerce, Room 5882, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, (202) 482-0937.

APPENDIX B.

EXPLORE FURTHER INFORMATION ON THE FCPA, ANTICORRUPTION, ETHICS, TRANSPARENCY, AND CORPORATE COMPLIANCE PROGRAMS ON THE FOLLOWING WEBSITES:

- **U.S. Department of Justice, Fraud Section** — Comprehensive information on the FCPA, legislative history of FCPA, 1998 amendments, opinion procedures, and international agreements (www.usdoj.gov/criminal/fraud.html).
- **U.S. Department of Commerce** — Office of the Chief Counsel for International Commerce, Information on Legal Aspects of International Trade and Investment, The Anti-Corruption Review, the FCPA, and other anticorruption materials (www.ita.doc.gov/legal); Market Access and Compliance/Trade Compliance Center, “First Annual Report to Congress on Implementation of the OECD Bribery Convention,” Trade Complaint Hotline, Trade and Related Agreements Database (TARA), Exporter’s Guides, Market Access Reports, Market Monitor, and “Market Access and Compliance-Rule of Law for Business Initiatives” (www.mac.doc.gov/tcc); Country Commercial reports and guides, trade information and export related information (www.ita.doc.gov/ita_homelitacnreg.htm); trade counseling and other services in other countries (1-800-USA-TRADE).
- **U.S. Department of State** — Information on the OECD Bribery Convention and First Global Forum on Fighting Corruption Materials — Relevant documents related to the OECD Bribery Convention (www.state.gov/www/issues/economic/bribery.html); First Global Forum on Fighting Corruption and Safeguarding Integrity, Washington, D.C., February 1999 (www.state.gov) and Second Global Forum, The Hague, The Netherlands, May 28-31 (www.gfcorruption.org). A copy of the First Global Forum Final Conference Report and “Guiding Principles for Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials” can also be purchased from the U.S. Government Printing Office (ISBN 0-16-050150-4); Country Reports, Economic Practices and Trade Practices (www.state.gov).
- **U.S. Office of Government Ethics (OGE)** — Information on ethics, latest developments in ethics, ethics programs, and informational and educational materials including OECD Public Service Management (PUMA) (www.usoge.gov/).
- **U.S. Department of the Treasury** — Information on money laundering, customs, and international financial institutions (www.treas.gov/).
- **U.S. Securities and Exchange Commission (SEC)** — Information about SEC enforcement actions, Complaint Center, and further information for accountants and auditors (www.sec.gov).
- **U.S. Agency for International Development (USAID)** — Center for Democracy and Governance, USAID’s Efforts on Anticorruption, Handbook on Fighting Corruption (www.info.usaid.gov/democracy/anticorruption).

- **U.S. Information Agency (USIA)** — In 1999, USIA was consolidated with the U.S. Department of State. The former website that housed information on U.S. policy and multinational fight against bribery, economic costs of corruption can be found at the Department of State's International Information Programs (www.usinfo.state.gov/topical/econ/bribes/).
- **U.S. Chamber of Commerce (USCOC)** — Center for International Private Enterprise (CIPE), an affiliate of the USCOC, information on corporate governance and anticorruption (www.cipe.org).
- **International Chamber of Commerce (ICC)** — Rules of Conduct and Bribery, ICC Commercial Crime Services, and due diligence (www.iccwbo.org).
- **Transparency International (TI)** — TI Corruption Index and Bribe Propensity Index; TI Source Book on anticorruption strategies and other international initiatives by governments, NGOs, and the private sector (www.transparency.de) and TI-USA (www.transparency-usa.org). 10TH IACC (www.10iacc.org).
- **U.S. International Council for Business** — (www.uscib.org).
- **The Conference Board** — Information on corporate ethics (www.conference-board.org).
- **American Bar Association (ABA)** — Taskforce on International Standards on Corrupt Practices (www.abanet.org/intlaw/divisions/public/corrupt.html); ABA-Central and East European Law Initiative (CEELI) (www.abanet.org/ceeli).
- **Ethics Officer Association (EOA)** — (www.eoa.org).
- **Ethics Resource Center** — (www.ethics.org).
- **COSO — The Committee of Sponsoring Organizations of the Treadway Commission** (www.coso.org). The COSO “Treadway Commission” is a volunteer private sector organization consisting of the five major financial professional associations dedicated to improving the quality of financial reporting through business ethics, effective internal controls, and corporate governance. The five associations are the American Accounting Association (AAA) [www.AAA-edu.org]; the American Institute of Certified Public Accountants (AICPA)[www.aicpa.org]; the Financial Executives Institute (FEI) [www.fei.org]; the Institute of Internal Auditors (IIA) [www.theiia.org]; and the Institute of Management Accountants (IMA) [imanet.org].
- **The Association of Government Accountants (AGA)** — (www.agacgfm.org); Sites Directory for U.S. and International Accounting Associations and State CPA Societies (www.taxsites.com/associations2.html).
- **International Organization of Supreme Audit Organizations (INTOSAI)** — (www.intosai.org).

- **Organization for Economic Cooperation and Development (OECD) - Anti-Corruption** — OECD Bribery Convention, country compliance assessment reports (www.oecd.org/daf/nocorruption); ANCORRSEB, the OECD Anticorruption ring online, a collection of materials on effective policies and practices (www.oecd.org/daf/nocorruptionweb/index.htm).
- **Financial Action Task Force on Money Laundering (FATF)** — (www.oecd.org/fatf).
- **International Criminal Police Organization (INTERPOL)** — (www.interpol.int)
- **Council of Europe (COE)** — COE Anticorruption Convention, related programs, and resources (www.coe.fr).
- **Organization for Security and Cooperation in Europe (OSCE)** — Charter for European Security, Rule of Law and Fight Against Corruption (www.osce.org).
- **Stability Pact for South Eastern Europe** — Special Coordinator of the Stability Pact for South Eastern Europe, Anticorruption Initiative and Compact of the Stability Pact (www.stabilitypact.org).
- **Organization of American States (OAS)** — The Fight Against Corruption in the Americas; Inter-American Convention Against Corruption; Resolutions of the General Assembly; studies and supporting documents (www.oas.org).
- **Middle East and North Africa (MENA)** — The World Bank Group (www.worldbank.org/mna/mena.nsf); UN Development Program (UNDP) — Management Development and Governance Division (magnet.undp.org).
- **Global Coalition for Africa (GCA)** — Principles to Combat Corruption in Africa Countries; Collaborative Frameworks to Address Corruption (www.gca-cma.org/ecorrtion.htm).
- **Asia-Pacific Economic Cooperation (APEC)** — Information on the Transparency Initiative, investment, government procurement, and customs (www.apecsec.org).
- **Association of Southeast Asian Nations (ASEAN)** — (www.aseansec.org).
- **South Asian Association for Regional Cooperation** — (www.saarc.org).
- **Pacific Basin Economic Council (PBEC)** — PBEC is an association of senior business leaders, which represents more than 1,200 businesses in 20 economies in the Pacific Basin region (www.pbec.org).
- **United Nations** — Centre for International Crime Prevention (CICP), Global Program Against Corruption (www.UNCJIN.org/CICP/cicp.html); UN Development Program (UNDP) — Management Development and Governance Division (magnet.undp.org).

- **World Trade Organization (WTO)** — Working Group on Transparency in Government Procurement Practices (*www.wto.org*).
- **The World Bank** — Public Sector Group, World Bank Anticorruption Strategy, information on preventing corruption in WB projects, helping countries reduce corruption, and supporting international efforts (*www.worldbank.org/publicsector/anticorrupt/*); Economic Development Institute (EDI), World Bank Anticorruption Diagnostic Surveys (*www.worldbank.org/wbi/governance*).
- **The Global Corporate Governance Forum** — An OECD and World Bank Initiative to help countries improve corporate governance standards and corporate ethics (*www.worldbank.org* or *www.worldbank.org/html/fpd/privatesector/cg/index.htm*); OECD Principles of Corporate Governance (*www.oecd.org/daf/governance/principles.htm*)
- **International Monetary Fund (IMF)** — Codes of Good Practices in Monetary and Financial Policies (*www.imf.org/external/np/mae/mft/index.htm*).
- **World Customs Organization (WCO)** — (*www.wcoomd.org*).
- **Inter-American Development Bank (IDB)** — (*www.iadb.org*).
- **Asian Development Bank (ADB)** — (*www.adb.org*).
- **African Development Bank (AfDB)** — (*www.afdb.org*).
- **European Bank for Reconstruction and Development (EBRD)** — (*www.ebrd.com*).
- **Americas' Accountability/Anti-Corruption (AAA) Project** — (*www.respondanet.com*).
- **Anti-Corruption Network for Transition Economies** — (*www.nobribes.org*).
- **Inter-Parliamentary Union** — (*www.ipu.org*).
- **World Forum on Democracy** — (*www.fordemocracy.net*).
- **National Democratic Institute for International Affairs (NDI)** — (*www.ndi.org*).
- **The International Republican Institute (IRI)** — (*www.iri.org*).
- **International Center for Journalists** — (*www.icjf.org*); **World Association of Newspapers** — (*www.fiej.org*).
- **The Carter Center** — (*www.cartercenter.org*).
- **The Asia Foundation** — (*www.asiafoundation.com*).
- **The National Endowment for Democracy (NED)** — (*www.ned.org*).

GUIDING PRINCIPLES FOR FIGHTING CORRUPTION AND SAFEGUARDING INTEGRITY AMONG JUSTICE AND SECURITY OFFICIALS

The following Anticorruption Principles were developed and approved by the United States Government in the preparation of the First Global Forum on Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials, held in Washington, D.C. in February 1999. Discussion at this Conference, among the many participants from around the world, addressed most of these principles. Today they continue to serve as an effective checklist in the fight against corruption and safeguarding integrity among government officials.

NOTE: Annotated Version. In this document, each of the practices is followed by a parenthetical letter or letters indicating from which source or sources the statement of the practice was derived, including agreements, documents and other sources in existing international literature or experience regarding corruption, public integrity or related matters of crime. Sources including those from the UN, OECD, OAS, GCA, EU and CoE are identified in the listing at the end of this document.

Corruption, dishonesty and unethical behavior among public officials represent serious threats to the basic principles and values of government, undermining public confidence in democracy and threatening to erode the rule of law. The aim of these Guiding Principles is to promote public trust in the integrity of officials within the public sector by preventing, detecting, and prosecuting or sanctioning official corruption and unlawful dishonest, or unethical behavior.

It is anticipated that these guiding principles will be implemented by each government in a manner appropriately tailored to the political, legal, economic and cultural circumstances of the country. Due to the different functions and missions of different judicial, justice, and security officials, not all practices are applicable in all categories. This document does not prescribe a specific solution to corruption among justice and security officials, but rather offers a list of potentially effective corruption-fighting practices for consideration.

The list of practices, which may apply to other sectors of government in addition to justice and security officials, is intended to help guide and assist governments in developing effective and appropriate means to best achieve their specific public integrity ends.

1. Establish and maintain systems of government hiring of justice and security officials that assure openness, equity and efficiency and promote hiring of individuals of the highest levels of competence and integrity.

Effective practices include:

- Systems for equitable compensation adequate to sustain appropriate livelihood without corruption (I, K, O);

- Systems for open and merit based hiring and promotion with objective standards (C, I, J);
- Systems which provide assurance of a dignified retirement without recourse to corruption (I, K, O);
- Systems for thorough screening of all employees for sensitive positions (M);
- Systems for probationary periods after initial hiring (M);
- Systems which integrate principles of human rights with effective measures for preventing and detecting corruption. (M).

2. Adopt public management measures that affirmatively promote and uphold the integrity of justice and security officials.

Effective practices include:

- An impartial and specialized institution of government to administer ethical codes of conduct (C, D, I, J, K);
- Training and counseling of officials to ensure proper understanding of their responsibilities and the ethical rules governing their activities as well as their own professionalism and competence (C);
- Training addressed to issues of brutality and other civil rights violations that often correlate with corrupt activity among justice and security officials (O, substantial international literature relating to human rights issues);
- Managerial mechanisms that enforce ethical and administrative standards of conduct (B, D, H, I, J, K);
- Systems for recognizing employees who exhibit high personal integrity or contribute to the anti-corruption objectives of their institution (O);
- Personnel systems that include regular rotation of assignments to reduce insularity that fosters corruption (B,D, J, K, O);
- Systems to provide appropriate oversight of discretionary decisions and of personnel with authority to make discretionary decisions (B, D, J, K, O);
- Systems that hold supervisors accountable for corruption control (B, D, J, K, O);
- Positive leadership which actively practices and promotes the highest standards of integrity and demonstrates a commitment to prevent and detect corruption, dishonesty and unethical behavior (I, O);

- Systems for promoting the understanding and application of ethical values and the standards of conduct required (I, O);
- Mechanisms to support officials in the public sector where there is evidence that they have been unfairly or falsely accused. (O)

3. Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity.

Effective practices include:

- Prohibitions or restrictions governing officials participating in official matters in which they have a substantial direct or indirect financial interest (I, J, O);
- Prohibitions or restrictions against officials participating in matters in which persons or entities with whom they are negotiating for employment have a financial interest (I, J, O);
- Limitations on activities of former officials in representing private or personal interests before their former governmental agency or department, such as prohibiting the involvement of such officials in cases for which former officials were personally responsible, representing private interests by their improper use of influence upon their former governmental agency or department, or using confidential knowledge or information gained during their previous employment as an official in the public sector (O);
- Prohibitions and limitations on the receipt of gifts or other advantages (E, I, J, O);
- Prohibitions on improper personal use of government property and resources (C, F, O).

4. Establish criminal laws and sanctions effectively prohibiting bribery, misuse of public property, and other improper uses of public office for private gain.

Effective practices include:

- Laws criminalizing the giving, offer or promise by any party (“active”) and the receipt or solicitation by any official (“passive”) of a bribe, and criminalizing or sanctioning the giving or receiving of an improper gratuity or improper gift. (A, C, E, F, G, J, others);
- Laws criminalizing or sanctioning the illegal use by officials of government information (C, F);
- Laws affirming that all justice and security officials have a duty to provide honest services to the public and criminalizing or sanctioning breaches of that duty (J);

- Laws criminalizing improper use of official power or position, either to the detriment of the government or for personal enrichment.

5. Adopt laws, management practices and auditing procedures that make corruption more visible and thereby promote the detection and reporting of corrupt activity.

Effective practices include:

- Systems to promote transparency, such as through disclosing the financial circumstances of senior officials (C, I, J, K).
- Measures and systems to ensure that officials report acts of corruption, and to protect the safety, livelihood and professional situation of those who do, including protection of their identities to the extent possible under the law (E, I, J);
- Measures and systems that protect private citizens who, in good faith, report acts of official corruption (C, D, E, F, I, J, M);
- Government revenue collection systems that deter corruption, in particular by denying tax deductibility for bribes or other expenses linked to corruption offenses (B, C, D, K);
- Bodies responsible for preventing, detecting, and eradicating corruption, and for punishing or disciplining corrupt officials, such as independent ombudsmen, inspectors general, or other bodies responsible for receiving and investigating allegations of corruption (B, D, I, J);
- Appropriate auditing procedures applicable to public administration and the public sector (D, I, J, K);
- Appropriately transparent procedures for public procurement that promote fair competition and deter corrupt activity (B, C, D, F, I, K).
- Systems for conducting regular threat assessments on corrupt activity (O).

6. Provide criminal investigators and prosecutors sufficient and appropriate powers and resources to effectively uncover and prosecute corruption crimes.

Effective practices include:

- Empowering courts or other competent authorities to order that bank, financial or commercial records be made available or be seized, and that bank secrecy not prevent such availability or seizure (C, E, K, L, M);

- Authorizing use under accountable legal supervision of wiretaps or other interception of electronic communication, or recording devices, in investigation of corruption offenses (E, F, K, M);
- Authorizing, where appropriate, the admissibility of electronic or other recorded evidence in criminal proceedings relating to corruption offenses (E, F, K, M);
- Employing where appropriate systems whereby persons charged with corruption or other corruption-related criminal offenses may secure more advantageous treatment in recognition of assisting in the disclosure and prosecution of corruption offenses (E, F, L, M);
- The development of appropriate information gathering mechanisms to prevent, detect and deter official corruption and dishonesty (O).

7. Ensure that investigators, prosecutors and judicial personnel are sufficiently impartial to fairly and effectively enforce laws against corruption.

Effective practices include:

- Personnel systems to attract and retain high quality corruption investigators (O);
- Systems to promote the specialization and professionalization of persons and organizations in charge of fighting corruption (D, E, K);
- Establishment of an independent mechanism within judicial and security agencies with the duty to investigate corruption allegations, and with the power to compel statements and obtain documents from all agency personnel (I, O);
- Codes of conduct or other measures that require corruption investigators, prosecutors, and judges to recuse themselves from any case in which their political, financial or personal interests might reasonably raise questions about their ability to be impartial. (O);
- Systems that allow for the appointment, where appropriate, of special authorities or commissions to handle or oversee corruption investigations and prosecutions (O);
- Standards governing the initiation of corruption investigations to ensure that public officials are not targeted for investigation for political reasons (O).

8. Ensure that criminal and civil law provide for sanctions and remedies that are sufficient to effectively and appropriately deter corrupt activity.

Effective practices include:

- Laws providing substantial criminal penalties for the laundering of the proceeds of public corruption violations (A, C, E, K, M);
- Laws providing for substantial incarceration and appropriate forfeiture of assets as a potential penalty for serious corruption offenses (A, C, E, G, others);
- Provisions to support and protect whistleblowers and aggrieved private parties (B, D, I, K).

9. Ensure that the general public and the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society.

Effective practices include:

- Establishing public reporting requirements for justice and security agencies that include disclosure about efforts to promote integrity and combat corruption (D, H, J, K);
- Enacting laws or other measures providing a meaningful public right of access to information about corrupt activity and corruption control activities (D, H, I, J, K).

10. Develop to the widest extent possible international cooperation in all areas of the fight against corruption.

Effective practices include:

- Systems for swift and effective extradition so that corrupt public officials can face judicial process (A, C, E, G, I, M, others);
- Systems to enhance international legal assistance to governments seeking to investigate and prosecute corruption violations (A, C, E, G, I, M, others);
- Systems to facilitate and accelerate international seizure and repatriation of forfeitable assets associated with corruption violations (A, C, E, F, G, I, M, others);
- Inclusion of provisions on combating corruption in appropriate bilateral and multilateral instruments (I, O).

11. Promote, encourage and support continued research and public discussion in all aspects of the issue of upholding integrity and preventing corruption among justice and security officials and other public officials whose responsibilities relate to upholding the rule of law.

Effective practices include:

- Appointment of independent commissions or other bodies to study and report on the effectiveness of efforts to combat corruption in particular agencies involved in justice and security matters (O);
- Supporting the efforts of multilateral and non-governmental organizations to promote public integrity and prevent corruption (O);
- Promoting efforts to educate the public about the dangers of corruption and the importance of general public involvement in government efforts to control corrupt activity (C, I, J, K, O).

12. Encourage activities of regional and other multilateral organizations in anti-corruption efforts.

Effective practices include:

- Becoming parties, as appropriate, to applicable multilateral legal instruments containing provisions to address corruption (I);
- Cooperating in carrying out programs of systematic follow-up to monitor and promote the full implementation of appropriate measures to combat corruption, through mutual assessment by governments of their legal and practical measures to combat corruption, as established by pertinent international agreements. (A, E, L, I, O);
- Participating actively in future international conferences on promoting integrity and combating corruption among justice and security officials.

Listing of Sources for Guiding Principles

- A. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- B. OECD Council Recommendations Against Corruption, May 1997.
- C. OAS Inter-American Convention Against Corruption.
- D. Council of Europe Committee of Ministers 20 Recommendations Against Corruption, November 1997.
- E. Council of Europe Criminal Law Convention on Corruption.
- F. Council of Europe Conclusions of the Second European Conference of Specialized Services in the Fight Against Corruption, October 1997.
- G. European Union Convention on Corruption of EU or Member Officials, May 1997.
- H. European Parliament Resolution on Combating Corruption in Europe, 1995.
- I. Global Coalition for Africa, Principles to Combat Corruption in African Countries, February, 1999.
- J. United Nations Secretariat Manual: Practical Measures Against Corruption, July 1990.
- K. United Nations Commission on Crime Prevention and Criminal Justice: Report of Expert Group on Action Against Corruption and Bribery, March 1997.
- L. United Nations Convention Against Illicit Trafficking in Narcotic Drugs or Psychotropic Substances.
- M. United Nations Convention Against Transnational Organized Crime, 2000.
- N. Financial Action Task Force, 40 Recommendations.
- O. Observed experience of governments (“common sense”).

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