



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

## **Anti-bribery & corruption: the fight goes global**

### **Commercial Fraud Commission**

**AIJA Annual Congress London 1 – 5 September 2015**

#### **National Report for the United States of America**

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September 2015

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# 1. THE LEGAL FRAMEWORK

1.1 What criminal and/or civil/administrative law(s) exist in your jurisdiction which are specifically targeted at bribery & corruption? Please provide:

- a. a brief summary of the offences;
- b. any affirmative defences that are available; and
- c. the penalties that may be imposed upon offenders.

The United States has a robust system of laws aimed at combatting bribery and corruption, both in the public sphere and in private commercial transactions. As the U.S. Senate explained in passing the 1977 Foreign Corrupt Practices Act, “[c]orporate bribery is bad for business. In our free market system it is basic that the sale of products should take place on the basis of price, quality and service. Corporate bribery is fundamentally destructive of that basic tenet.”<sup>1</sup>

When considering the anti-bribery laws in the United States, it is important to note that the American legal system is divided between federal laws and jurisdiction and the jurisdiction and laws of the fifty individual states. Federal law has limited scope and generally is restricted to covering conduct that involves interstate commerce, foreign commerce, or another important federal interest. Federal law—rather than state law—is the primary tool for prosecuting public corruption. But because anti-bribery laws at the state level differ widely from state-to-state in the conduct that is prohibited and the available penalties, federal prosecutors also often rely upon federal laws to prosecute bribery and corruption within the private sector. These issues are addressed below, beginning with a discussion of federal law.

## A. Federal Law

### 1. Public Corruption

A variety of laws exist at the federal level that criminalize bribery and corruption involving public officials and government contracts. The federal anti-bribery statute (18 U.S.C. § 201) is the primary anti-corruption law in the United States. It criminalizes active bribery (promising, offering, or giving) and passive bribery (requesting, receiving, or accepting an offer or promise) involving domestic public officials, as well as the giving and receiving of illegal gratuities by public officials.<sup>2</sup> Bribery “requires a showing that something of value was corruptly given, offered, or promised to a public official (as to the giver) or corruptly demanded, sought, received, accepted, or agreed to be received or accepted by a public official (as to the recipient) with intent, . . . ‘to influence any official act’ (giver) or in return for ‘being influenced in the performance of any official act’ (recipient).”<sup>3</sup> An illegal gratuity, on the other hand, requires a showing that “something of value was given, offered, or promised to a domestic public official (as to the giver), or demanded, sought, received, accepted, or agreed to be received or accepted by a public official (as to the recipient), ‘for or because of any official act performed or to be performed

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<sup>1</sup> S. Rep. No. 95-114, at 4 (1977).

<sup>2</sup> 18 U.S.C. § 201(b)-(c).

<sup>3</sup> *United States v. Sun-Diamond Growers of Ca.*, 526 U.S. 398, 404 (1999).

by such public official.”<sup>4</sup> For bribery, “there must be a *quid pro quo*—a specific intent to give or receive something of value in exchange for an official act.”<sup>5</sup> An illegal gratuity, in contrast, could be a reward for some particular “future act that the public official will take (or may already have determined to take), or for a past act that he has already taken.”<sup>6</sup>

Conviction under the anti-bribery statute is punishable with a term of imprisonment of up to fifteen years and a fine of up to \$250,000 for individuals (\$500,000 for organizations) or triple the value of the bribe, whichever is greater, and (for the recipient) a disqualification from holding government office.<sup>7</sup> A violation of the illegal gratuity statute is punishable by up to two years’ imprisonment and a fine of up to \$250,000 for individuals (\$500,000 for corporations).<sup>8</sup> A defendant convicted of bribery or participation in an illegal gratuity can also be ordered to pay restitution. Additional criminal, civil, or administrative penalties may be available to the extent the conduct underlying the conviction also violates other laws, regulations, or codes of conduct.

Similarly, the Anti-Kickback Act (41 U.S.C. §§ 8701-8701) is aimed at stopping public corruption within the specific context of government contracting. The Act prohibits bribes and “kickbacks” in government contracting, making it illegal to provide or attempt to provide any kickback, accept or attempt to accept any kickback, or include the amount of any kickback in a public contract.<sup>9</sup> Any person who willfully violates the Anti-Kickback Act is subject to maximum imprisonment of up to ten years and criminal fines up to \$250,000 for individuals (\$500,000 for corporations).<sup>10</sup> The United States can also recover civil penalties from any person knowingly engaged in prohibited conduct at a level of twice the amount of each kickback, up to \$10,000 for each prohibited occurrence; and the government can recover the amount of the kickback from any person whose employee, subcontractor or subcontractor employee provides, accepts, or charges a kickback.<sup>11</sup> Corporations can be vicariously liable under the Anti-Kickback Act for the acts of their employees.<sup>12</sup>

The Hobbs Act (18 U.S.C. § 1951), which prohibits attempted or actual extortion or robbery affecting interstate or foreign commerce, is another tool that the government can use to prosecute bribery.<sup>13</sup> While Congress passed the Hobbs Act to fight racketeering in labor-management disputes, it is often used in cases involving public corruption, commercial disputes, and corruption directed at members of organized labor unions. To establish a violation under the Hobbs Act, the government need only show that the “public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.”<sup>14</sup> Violations of the Hobbs Act are punishable by imprisonment of up to twenty years and criminal fines determined by the Court.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 404-05.

<sup>6</sup> *Id.* at 405.

<sup>7</sup> See 18 U.S.C. §§ 201(b) and 3571.

<sup>8</sup> See 18 U.S.C. §§ 201(c) and 3571.

<sup>9</sup> 41 U.S.C. § 8702. The statute defines a “kickback” as “any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.” 41 U.S.C. § 8701.

<sup>10</sup> 41 U.S.C. § 8707.

<sup>11</sup> 41 U.S.C. § 8706.

<sup>12</sup> *Kellogg Brown & Root Servs., Inc. v. United States*, 728 F.3d 1348, 1370 (Fed. Cir. 2013).

<sup>13</sup> The Hobbs Act defines “extortion as the “obtaining of property from another, with his consent . . . under color of official right.” 18 U.S.C. 1951(b)(2).

<sup>14</sup> *United States v. Ocasio*, 750 F.3d 399, 409 (4th Cir. 2013) (quoting *Evans v. United States*, 504 U.S. 255, 268 (1992)).

Perhaps the most well-known of American anti-corruption statutes is the Foreign Corrupt Practices Act (the “FCPA”).<sup>15</sup> The FCPA prohibits commercial bribery of foreign officials, both by U.S. companies and individuals, and by foreign companies and individuals who act in furtherance of illegal payments (or an offer, promise, or authorization to pay) in the United States.<sup>16</sup> The FCPA’s anti-bribery provisions apply only to “payments intended to induce or influence a foreign official to use his or her position in order to assist . . . in obtaining or retaining business for or with, or directing business to, any person.”<sup>17</sup> This is referred to as the “business purpose test,” which is broadly applied to a wide-range of conduct. While most violations involve bribes to obtain or keep government contracts, the FCPA prohibitions reach bribes paid to gain any business advantage, including bribes made to secure payments, to secure favorable tax treatment, to eliminate or minimize customs duties, to obtain government action to stop competitors from entering a market, or to circumvent a licensing or permit requirement.<sup>18</sup> The FCPA also contains accounting provisions, intended to complement the anti-bribery provisions, that require U.S. and foreign public companies listed on stock exchanges in the United States to maintain accurate books and records and to devise and maintain an adequate system of internal accounting controls.<sup>19</sup> The accounting provisions also prohibit individuals and businesses from knowingly falsifying books or records or failing to implement or circumventing internal controls.<sup>20</sup>

The penalties for an FCPA violation can be severe. For each criminal violation of the anti-bribery provisions, corporations face up to \$2 million in fines (as distinguished from disgorgement of ill-gotten proceeds) and a corporate officer or director who willfully violated the law can be fined up to \$100,000 and face imprisonment for up to five years.<sup>21</sup> Each criminal violation of the accounting provisions subjects companies to a possible fine of up to \$25 million, and individuals face a fine of up to \$5 million and imprisonment of up to twenty years.<sup>22</sup> Under certain circumstances, courts have the authority to impose significantly higher financial penalties. American authorities also have the authority to pursue civil enforcement actions under the FCPA.<sup>23</sup> Violations of the anti-bribery provisions are also subject to civil fines of up to \$16,000 per violation.<sup>24</sup> Criminal or civil fines imposed on an individual cannot be paid by their employer or principal.<sup>25</sup> Finally, companies and individuals who violate the FCPA may face other significant consequences, including debarment from contracting with the United States government or multilateral investment banks and the suspension or revocation of certain expert privileges.<sup>26</sup>

## 2. Private Corruption

Unlike public corruption, there is no general private commercial anti-bribery statute at the federal level in the United States. Such matters are usually left to state law. Nonetheless, authorities often rely on certain federal statutes as a basis to prosecute bribery and corruption in the private sector. For exam-

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<sup>15</sup> 15 U.S.C. § 78dd-1, *et seq.*

<sup>16</sup> See 15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3.

<sup>17</sup> United States Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012) at p. 12, available at <http://www.justice.gov/criminal/fraud/fcpa/guidance>.

<sup>18</sup> *Id.*, at p. 13.

<sup>19</sup> *Id.*, at p. 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, at p. 68.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, at p. 69.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, at pp. 68-69.

<sup>26</sup> *Id.*, at pp. 69-70.

ple, the Travel Act (18 U.S.C. § 1952) makes it a federal crime to travel or use a facility in interstate or foreign commerce (such as the mail) to engage in unlawful conduct, which includes bribery in violation of the law of the state in which the act occurred.<sup>27</sup> As the U.S. Supreme Court explained, Congressional intent in the enactment of the Travel Act was to “add a second layer of enforcement supplementing what it found to be inadequate state authority and enforcement.”<sup>28</sup>

Similarly, the federal mail and wire fraud statutes (18 U.S.C. §§ 1341 and 1343), which prohibit the use of facilities of interstate commerce (*e.g.*, the mail or any form of communication carried by wire—email, telephone, internet, interstate bank transfer, facsimile—or any physical movement across state or national borders) in furtherance of a “scheme to defraud,” have been employed to prosecute cases of commercial bribery.<sup>29</sup> Violation of the mail or wire fraud statutes can be punishable by imprisonment of up to twenty years and a fine.<sup>30</sup> Acts committed in violation of a state’s law against commercial bribery can also constitute prohibited racketeering activity that is subject to criminal liability under the federal Racketeer Influenced and Corrupt Organizations Act (RICO)—a statute that was primarily enacted to combat organized crime.<sup>31</sup> Some courts have also found that acts of commercial bribery are within reach of the Robinson-Patman Act, a federal antitrust statute aimed at illegal price discrimination.<sup>32</sup>

## B. State Law:

Historically, most states limited their anti-bribery laws to proscribe act of bribery involving public officials. Today, however, the majority of U.S. jurisdictions have statutes expressly outlawing bribery in private commercial transactions. Yet, such state laws often differ on the kind of conduct that is prohibited. As of 2014, thirty-nine U.S. states enacted general anti-bribery statutes that ban private commercial bribery in all businesses and industries. The anti-bribery laws is a minority of states, however, only reach specific industries or professions, such as bank employees, labor officials, sporting event participants, and common carrier employees. Criminal penalties also vary by state, so the possible punishment may depend upon the location where the misconduct occurred, ranging from significant incarceration and large fines to minimal (if any) prison time and small fines.

Additionally, victims of bribery, kickback schemes, or other acts of private corruption may be able to bring private civil actions against the perpetrators in either federal or state courts. Depending on the

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<sup>27</sup> *Perrin v. United States*, 444 U.S. 37, 50 (1979) (upholding travel act conviction of defendant who sought to bribe an employee of a geological exploration company in order to steal confidential data in violation of Louisiana law).

<sup>28</sup> *Id.*, at 42.

<sup>29</sup> See, *e.g.*, *United States v. Nayak*, 769 F.3d 978, 981-84 (7th Cir. 2014) (affirming mail fraud indictment of owner of outpatient surgery centers for secretly bribing physicians and paying kickbacks in exchange for referrals to his surgery centers); *United States v. Siddiqui*, 2010 WL 3835604 (N.D. Cal. Sept. 28, 2010) (former vice president of electronics chain store indicted under wire fraud statute for making deals with certain vendors who provided kickbacks in exchange for business); *United States v. Hansmann*, 345 F.3d 952, 958-59. (7th Cir. 2003) (affirming wire fraud and mail fraud convictions of personal injury lawyer and chiropractor engaged in kick-back scheme involving client referrals).

<sup>30</sup> These penalties dramatically increase to a maximum of 30 years imprisonment and/or fines up to \$1 million for violators whose conduct occurs in “connection with a presidentially declared major disaster or emergency” or whose conduct “affects a major financial institution.” 18 U.S.C. §§ 1341 and 1343.

<sup>31</sup> *United States v. Parise*, 159 F.3d 790, 803 (3d Cir. 1998) (affirming RICO conviction based on defendant’s participation in a scheme to bribe union employees to refer personal injury cases to a law firm in violation of Pennsylvania’s commercial bribery law). See also 18 U.S.C. § 1961(1)(A) (defining bribery as a “racketeering” activity under the RICO statute).

<sup>32</sup> See *FTC v. Henry Broch & Co.*, 363 U.S. 166, 169-70 n.6 (1960); *Harris v. Duty Free Shoppers Ltd. P’ship.*, 940 F.2d 1272, 1274 (9th Cir. 1991); *Grace v. E.J. Kozijn Co.*, 538 F.2d 170, 173 (7th Cir. 1976).

circumstances and underlying facts, such claims could be premised on a number of common law or statutory theories, including fraud, breach of contract, civil RICO, civil conspiracy, unfair competition/trade practices, tortious interference with contract, tortious interference with expected business relations, or antitrust violations.

**1.2 Does your jurisdiction outlaw “private” bribery/corruption (i.e. transactions between two or more private entities or persons) as well as “public” bribery/corruption? If so, please explain how the distinction is drawn between private and public bribery/corruption.**

Yes. As discussed above, federal and state laws in the United States outlaw (in varying degrees) bribes involving both public officials and private businesses or business people. The federal anti-bribery statute defines a public official as any:

Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.<sup>33</sup>

Courts in the United States have also recognized that private individuals and nonfederal employees may be “public officials” under the federal anti-bribery statute if they hold a position of trust with official federal responsibilities. This often occurs in the context where an individual is responsible for distributing or administering federal funds. For example, in *Dixson v. United States*, the Court held that the executive director of a private corporation qualified as a “public official” because the individual was responsible for administering government funds under a grant from the federal Department of Housing and Urban Development.<sup>34</sup> A private individual could also be deemed a “public official” for purposes of the anti-corruption laws when he or she is engaged in a “quintessentially sovereign function,” such as a state prison guard, fee appraiser approved by the federal Department of Veterans Affairs, a county deputy sheriff responsible for supervising federal inmates, private grain inspectors acting on behalf of the federal Department of Agriculture, the building manager at a branch of the Federal Reserve Bank, and a local mechanic at a federal medical center.<sup>35</sup>

**1.3 Is your law extra-territorial? If so, in what circumstances can it be enforced if the relevant acts/omissions of bribery/corruption occur outside your jurisdiction?**

Generally, the laws of the United States do not apply extraterritorially absent clear expression of affirmative Congressional intent to give a statute extraterritorial effect. That said, the FCPA is the primary American statute that outlaws misconduct that occurs outside of the territorial jurisdiction of the United States. Under a theory of jurisdiction based on the “nationality principle,” the FCPA applies to U.S.

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<sup>33</sup> 18 U.S.C. 201(a)(1). Other relevant definitions also capture state and local officials.

<sup>34</sup> 465 U.S. 482, 496-500 (1984).

<sup>35</sup> *United States v. Neville*, 82 F.2d 1101 (4th Cir. 1996); *United States v. Madeoy*, 912 F.2d 1486 (D.C. Cir. 1990); *United States v. Velazquez*, 847 F.2d 140 (4th Cir. 1988); *United States v. Kirby*, 587 F.2d 876 (7th Cir. 1978); *United States v. Hollingshead*, 672 F.2d 751 (9th Cir. 1982); *United States v. Gomez*, 807 F.2d 1523 (10th Cir. 1986).

citizens and businesses—whether acting in the United States or abroad.<sup>36</sup> But, the FCPA only applies to foreign nationals and businesses (that are not “issuers” or “domestic concerns,” as defined under the Act) that, either directly or indirectly, engage in any act in furtherance of a corrupt payment (or an offer, promise, or authorization to pay) while in the territory of the United States.<sup>37</sup> Other laws, including the Travel Act and the mail and wire fraud statutes discussed above can apply, however, to acts committed in the United States even if there are foreign elements to the corrupt conduct or scheme.

#### **1.4 Are there any “safe harbours” or exemptions in relation to transactions that might otherwise be regarded as bribes, such as “facilitation payments”, which are expressly excluded from being illegal? If so, is this determined by statute/codified law, by case law or otherwise?**

There are no general affirmative defenses to domestic bribery charges under U.S. law. But a required element that the government must establish to obtain a criminal bribery conviction is a corrupt intent.

In contrast, the FCPA provides two affirmative defenses: (1) the “local law defense,” and (2) the “reasonable and bona fide business expenditure defense.” Under the “local law defense,” the defendant must prove that “the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official’s, political party’s, party official’s, or candidate’s country” at the time of the offense.<sup>38</sup>

The “reasonable and bona fide business expenditures defense” applies where “the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to (A) the promotion, demonstration, or explanation or products or services; or (B) the execution or performance of a contract with a foreign government or agency thereof.”<sup>39</sup> This defense allows companies to provide reasonable travel and lodging expenses to a foreign official in connection with the statutorily enumerated business activities.

In addition to these affirmative defenses, the FCPA also allows a narrow exception for facilitation payments to foreign government officials and employees made in furtherance of “routine governmental action.”<sup>40</sup> This exception applies only “when a payment is made to further ‘routine governmental action’ that involves non-discretionary acts,” such as processing visas, providing police protection or mail service, and supplying public utilities.<sup>41</sup>

The U.S. Department of Justice and the Securities and Exchange Commission have issued several releases and opinions that provide guidance and a list of safeguards that can help business evaluate whether a particular payment or expenditure may risk an FCPA violation.

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<sup>36</sup> United States Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012) at p. 12, available at <http://www.justice.gov/criminal/fraud/fcpa/guidance>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, at p. 23; *United States v. Kozony*, 582 F. Supp. 2d 535, 537-40 (S.D.N.Y. 2008).

<sup>39</sup> 15 U.S.C. §§ 78dd-1, 78dd-2; see also United States Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012) at p. 24, available at <http://www.justice.gov/criminal/fraud/fcpa/guidance>.

<sup>40</sup> *Id.*, at 25.

<sup>41</sup> *Id.*



- 1.5 Does the financial regulatory system (i.e. the law and regulations governing the operation and conduct of banks and other financial institutions) in your jurisdiction address the topic of bribery & corruption? If so, please provide a brief summary of the obligations (including systems/controls and reporting obligations) that are imposed on banks and other financial institutions in this regard.**

The same anti-bribery and corruption laws discussed above also generally apply to banks and other financial institutions and their employees. Additionally, banks and financial institutions operating in the United States are subject to stringent anti-money laundering laws and rules and are required by the Bank Secrecy Act and other laws to file reports about certain financial transactions and report and monitor suspicious activity.

## **2. CORPORATE CRIMINAL LIABILITY**

- 2.1 In the context of bribery/corruption, does your law recognise the concept of corporate criminal liability? E.g. can a corporate entity be found guilty of bribery?**

Yes. “A corporation can be held liable for the criminal [bribery] acts of its agents so long as the agents are acting within the scope of employment.”<sup>42</sup> The test for corporate criminal liability is whether the corporation’s agent is “performing acts of the kind which he is authorized to perform, and those acts are motivated—at least in part—by an intent to benefit the corporation.”<sup>43</sup>

- 2.2 If the answer to 2.1 above is “yes”, please provide a brief explanation of the legal theory of corporate criminal liability (i.e. what circumstances must be established for corporate liability to arise and what form does that liability take) as well as the penalties that may be imposed upon a corporate offender.**

The test for corporate criminal liability is whether the corporation’s agent is “performing acts of the kind which he is authorized to perform, and those acts are motivated—at least in part—by an intent to benefit the corporation.”<sup>44</sup> Corporations found liable of commercial bribery are typically subject to monetary fines, restitution, and/or injunctions that proscribe future violations.

- 2.3 Are there any pending or expected changes to the law of corporate criminal liability in your jurisdiction? If so, please explain the proposed changes and the expected timeframe for implementation.**

Not at this time.

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<sup>42</sup> *United States v. Potter*, 463 F.3d 9, 26 (1st Cir. 2006) (affirming conviction of a dog racing track and its chief executor officer and general manager under the mail and wire fraud statutes for participation in a scheme to bribe the then-speaker of the Rhode Island House of Representatives to enact legislation favorable to the dog track).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

### **3. MUTUAL LEGAL ASSISTANCE / CO-OPERATION**

#### **3.1 Is your jurisdiction a signatory to any bi-lateral or multi-lateral treaties or other instruments regarding mutual legal assistance / co-operation in the context of bribery & corruption? If so, which ones?**

Yes. The United States is a signatory of many international treaties or other instruments providing for cooperation in the context of bribery and corruption. These include the following: (a) United Nations Convention Against Corruption (“UNCAC”); (b) OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; (c) OAS Inter-American Convention Against Corruption; (d) Council of Europe Group of States Against Corruption (“GRECO”); (e) Council of Europe Convention on the Transfer of Sentenced Persons; and (f) Inter-American Convention on Serving Sentences Abroad.

#### **3.2 Are the regulatory/prosecution authorities in your jurisdiction parties to any formal or informal co-operation arrangements with equivalent authorities in other jurisdictions (e.g. a memorandum of understanding, etc.)? If so, please provide a brief summary of the arrangements and the other authorities/jurisdictions.**

Yes. The United States actively works formally and informally, at both the bilateral and regional levels, with the relevant anti-corruption authorities in many foreign jurisdictions around the world to share information and strategies, prosecute instances of bribery and corruption, and strengthen prosecutorial and police capacity and training. The United States routinely provides and requests assistance in bribery and corruption cases under numerous existing multilateral and bilateral legal assistance treaties and other instruments. American authorities also often participate in joint investigative teams—either pursuant to multilateral and bilateral agreements or on a case-by-case basis. Further, the United States has bilateral extradition treaties with more than 130 states and multilateral organizations, including the European Union. In 2009 alone, the United States provided more than \$1 billion for anti-corruption and related good governance assistance to foreign states.<sup>45</sup>

### **4. CASES**

#### **4.1 Please describe in brief three (3) cases of bribery/corruption in (or involving) your jurisdiction which illustrate the trend towards cross-border/global investigation and enforcement of anti-bribery laws. For example, cases where:**

- a. your jurisdiction’s law(s) were enforced on an extra-territorial basis;**
- b. there was a degree of cooperation/assistance provided by your jurisdiction to another jurisdiction, or vice versa; and/or**
- c. penalties were imposed by your jurisdiction as well as by other jurisdictions, in relation to the same set of facts.**

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<sup>45</sup> United States Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012) at p. 6, available at <http://www.justice.gov/criminal/fraud/fcpa/guidance>.

## **A. Walmart**

A 2012 article in the *New York Times* revealed that Walmart's Mexican division (Walmart de Mexico) engaged in a widespread bribery scheme that involved Walmart's payment of \$24 million in bribes to Mexican officials in connection with Walmart's rapid expansion in that country. According to the article, Walmart regularly bribed officials in Mexico for building permits and related favors that quickened its expansion efforts. The *Times* also reported that Walmart made another \$16 million in "donations" to Mexican local governments to further speed up the growth of its Mexican operations. Additionally, it was disclosed that although executives at Walmart's global headquarters in Arkansas were told by a Walmart attorney that he funneled bribes to Mexican officials, the company stopped an internal investigation of the matter and failed to report the potential FCPA violations to the relevant U.S. and Mexican authorities.

The United States government is now investigating Walmart for potential FCPA violations, and Mexican authorities are conducting their own inquiry. Walmart disclosed in public filings that its internal investigation has expanded to other countries including Brazil, India and China. Walmart is also facing several shareholder lawsuits in the U.S. And, according to company statements, Walmart spent nearly \$500 million in the last two years on internal and external inquiries related to the corruption scandal; and it estimates that it will spend an additional \$200-\$240 million in 2015. Since the scandal became public, at least eight Walmart executives in Mexico, India and Arkansas have left the company and Walmart has increased its compliance staff by more than 30%.

## **B. Siemens A.G.**

In December 2008, Siemens A.G. settled enforcement actions with government prosecutors in the United States and Germany to resolve corruption charges against the company for engaging in a widespread and systematic practice of bribing foreign government officials to obtain business between 2001 and 2007. According to U.S. and German authorities, Siemens paid bribes in the amount of \$1.4 billion through more than 4,000 separate payments in connection with the design and construction of metro transit lines in Venezuela, trains and signaling lines in China, high voltage lines in China, refineries in Mexico, power plants in Israel, mobile telephone networks in Bangladesh, telecommunications projects in Nigeria, national identity cards in Argentina, medical devices in Vietnam, China and Russia, and traffic control systems in Russia. Siemens also paid kickbacks to Iraqi officials in connection with the sale of power stations and equipment to Iraq under the United Nations Oil for Food Program. It is estimated that Siemens earned \$1.1 billion in profits from these transactions. Additionally, Siemens made approximately 1,185 other payments to third parties amounting to roughly \$391 million that were not properly controlled by the company and used, in part, for commercial bribery and embezzlement. Siemens used elaborate systems to disguise the payments, which included false invoices and payment records, false business consultant agreements, and false expense reports.

To resolve the charges, Siemens agreed to pay a total of \$1.6 billion in fines and disgorgement of profits. That includes \$350 million in disgorgement paid to the U.S. Securities & Exchange Commission, \$450 million in criminal fines paid to the U.S. Department of Justice, and a fine of \$569 million paid to the Office of the Prosecutor General in Munich, Germany. In 2007, Siemens paid a previous fine of \$285 million to the Munich Prosecutor.

### **C. Alstom S.A.**

On December 22, 2014, French power and transportation conglomerate Alstom S.A. pleaded guilty and agreed to a \$772 million fine—the largest penalty ever paid in an FCPA case—to settle United States Department of Justice charges that it bribed officials in numerous countries around the world to secure business. Additionally, Alstom’s Swiss subsidiary pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA and two of Alstom’s U.S. subsidiaries entered deferred prosecution agreements, admitting that they too conspired to violate the FCPA’s anti-bribery provisions.

The Alstom entities, through various corporate executives and employees, bribed government officials and falsified company books and records in connection with power, grid and transportation projects for state-owned entities around the world, including Indonesia, Egypt, Saudi Arabia, the Bahamas, and Taiwan. In total, Alstom paid more than \$75 million in bribes to secure \$4 billion in projects, with a profits of approximately \$300 million.

American authorities received significant cooperation in the case from the authorities in several foreign jurisdictions, including the Corruption Eradication Commission of Indonesia, the Office of the Attorney General in Switzerland, the Serious Fraud Office in the United Kingdom, and authorities in Germany, Italy, Singapore, Saudi Arabia, Cyprus, and Taiwan. A high-ranking member of the Indonesian Parliament was convicted of taking bribes from Alstom is and currently serving a three-year prison sentence in Indonesia.