GETTING THE DEAL THROUGH

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in 40 jurisdictions worldwide

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Global Overview

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Corruption, including corruption of public officials, dates from early in human history and countries have long had laws to punish their own corrupt officials and those who pay them bribes. But national laws prohibiting a country's own citizens and corporations from bribing public officials of other nations are a new phenomenon, less than a generation old. Over the course of perhaps the last 15 years, anti-corruption law has established itself as an important, transnational legal speciality, one that has produced multiple international conventions and scores of national laws, as well as an emerging jurisprudence that has become a prominent reality in international business and a well-publicised theme in the media.

This volume undertakes to capture the growing anti-corruption jurisprudence that is developing around the globe. It does so first by summarising national anti-corruption laws that have implemented and expanded treaty obligations that some 140 countries have now assumed. These conventions oblige their signatories to enact laws that prohibit paying bribes to foreign officials. Dozens of countries have already done so, as this volume confirms. These laws address both the paying and receiving of illicit payments – the supply and the demand sides of the official corruption equation – as well as mechanisms of international cooperation that have never before existed.

Second, this volume addresses national financial record-keeping requirements that are increasingly an aspect of foreign bribery laws because of their inclusion in anti-corruption conventions and treaties. These requirements are intended to prevent the use of accounting practices to generate funds for bribery or to disguise bribery on a company's books and records. Violations of record-keeping requirements can provide a separate basis of liability for companies involved in foreign as well as domestic bribery.

Finally, because the bribery of a foreign government official also implicates the domestic laws of the country of the corrupt official, this volume summarises the more well-established national laws that prohibit domestic bribery of public officials. Generally not a creation of international obligations, these are the laws that apply to the demand side of the equation and may also be brought to bear on payers of bribes who, although foreign nationals, may be subject to personal jurisdiction, apprehension and prosecution under domestic bribery statutes.

The growth of anti-corruption law can be traced through a number of milestone events that have led to the current state of the law, which has most recently been expanded by the entry into force in December 2005 of the sweeping United Nations International Convention against Corruption. Spurred on by a growing number of high-profile enforcement actions, investigative reporting and broad media coverage, ongoing scrutiny by non-governmental organisations and the appearance of an expanding cottage industry of anti-corruption compliance programmes in multinational corporations, anti-corruption law and practice is rapidly coming of age.

The US 'questionable payments' disclosures and the FCPA

The roots of today's legal structure prohibiting bribery of foreign government officials can fairly be traced to the serendipitous discovery in the early 1970s of a widespread pattern of corrupt payments to foreign government officials by US companies. First dubbed merely 'questionable' payments by regulators and corporations alike, these practices came to light in the wake of revelations that a large number of major US corporations had used off-book accounts to make large payments to foreign officials to secure business. Investigating these disclosures, the US Securities and Exchange Commission (SEC) established a voluntary disclosure programme that allowed companies that admitted to having made illicit payments to escape prosecution on the condition that they implement compliance programmes to prevent the payment of future bribes. Ultimately, more than 400 companies, many among the largest in the United States, admitted to having made a total of more than US$300 million in illicit payments to foreign government officials and political parties. Citing the destabilising repercussions in foreign governments whose officials were implicated in bribery schemes – including Japan, Italy and the Netherlands – the US Congress, in 1977, enacted the Foreign Corrupt Practices Act (FCPA), which prohibited US companies and individuals from bribing non-US government officials to obtain or retain business and provided for both criminal and civil penalties.

In the first 15 years of the FCPA, during which the US law was unique in prohibiting bribery of foreign officials, enforcement was steady but modest, averaging one or two cases a year. Although there were recurring objections to the perceived impact that this unilateral law was having on the competitiveness of US companies, attempts to repeal or dilute the FCPA were unsuccessful. Thereafter, beginning in the early- to mid-1990s, enforcement of the FCPA sharply escalated, and, at the same time, a number of international and multinational developments focused greater public attention on the subject of official corruption and generated new and significant anti-corruption initiatives.

Transparency International

In hindsight, a different type of milestone occurred in Germany in 1993 with the founding of Transparency International, a non-governmental organisation created to combat global corruption. With national chapters and chapters-in-formation now in more than 90 countries, Transparency International promotes transparency in governmental activities and lobbies governments to enact anti-corruption reforms. Transparency International's annual Corruption Perceptions Index (CPI), which it began publishing in 1995, has been uniquely effective in publicising and heightening public awareness of those countries in which official corruption is perceived to be most rampant. Using assessment and opinion surveys, the CPI currently ranks 180 countries by their perceived levels of corruption and publishes the results annually. In 2008, Denmark, New Zealand and Sweden

tied as the countries seen to be the least corrupt in the world, while Somalia, followed closely by Myanmar and Iraq, topped the index as those perceived to be the most corrupt.

Transparency International has also developed and published the Bribe Payers Index (BPI), a similar index designed to evaluate the supply side of corruption and rank the 30 leading exporting countries according to the propensity of their companies to bribe foreign officials. In the 2008 BPI, Belgian and Canadian firms were seen as the least likely to bribe, while Russian firms, followed closely by Chinese and Mexican firms, were seen as the worst offenders.

Through these and other initiatives, Transparency International has become recognised as a strong and effective voice dedicated solely to combating corruption worldwide.

The World Bank

Three years after the formation of Transparency International, the World Bank joined the battle to stem official corruption. In 1996, James D Wolfensohn, then president of the World Bank, announced at the annual meetings of the World Bank and the International Monetary Fund that the international community had to deal with 'the cancer of corruption'. Since then, the World Bank has launched 600 programmes designed to curb corruption globally and within its own projects. These programmes, which have proved controversial and have encountered opposition from various World Bank member states, include debarring consultants and contractors that engage in corruption in connection with World Bank-funded projects. Since 1999, the World Bank has sanctioned over 335 firms and individuals for fraud and corruption, and referrals from the Integrity Vice Presidency of findings of fraud or corruption to national authorities for prosecution have resulted in 26 criminal convictions to date.

In 2006, the World Bank established a voluntary disclosure programme (VDP) which allows firms and individuals who have engaged in misconduct – such as fraud, corruption, collusion or coercion – to avoid public debarment by disclosing all past misconduct, adopting a compliance programme, retaining a compliance monitor and ceasing all corrupt practices. The VDP, which was two years in development under a pilot programme, is administered by the World Bank's Department of Institutional Integrity. The World Bank's prestige and leverage promise to be significant forces in combating official corruption, although the World Bank continues to face resistance from countries in which corrupt practices are found to have occurred.

More recently, the World Bank announced that it would begin publishing the names of companies that have been blacklisted or debarred from participating in World Bank procurement programmes. Prior to this, the World Bank had only published the names of companies banned from participating in World Bank-funded projects. Immediately after the January 2009 announcement, the World Bank published the names of three Indian companies, including two prominent software firms, which had been debarred over the last two years for providing 'improper benefits to bank staff'.

International anti-corruption conventions

Watershed developments in the creation of global anti-corruption law came with the adoption of a series of international anti-corruption conventions between 1996 and 2005. Although attention in the early 1990s was focused on the Organisation for Economic Cooperation and Development (OECD), the Organisation of American States (OAS) was the first to reach agreement, followed by the OECD, the Council of Europe and the African Union. Most recent, and most ambitious, is the United Nations International Convention against Corruption, adopted in 2003. The events unfolded as follows.

On 29 March 1996, OAS members initialled the Inter-American Convention against Corruption (IACAC) in Caracas. The IACAC entered into force on 6 March 1997. Thirty-three of the 34 signatories have now ratified the IACAC. The IACAC requires each signatory country to enact laws criminalising the bribery of government officials. It also provides for extradition and asset seizure of offending parties. In addition to emphasising heightened government ethics, improved financial disclosures and transparent bookkeeping, the IACAC facilitates international cooperation in evidence gathering.

In 1997, 28 OECD member states and five non-member observers signed the Convention on Combating Bribery of Foreign Officials in International Business Transactions (OECD Anti-Bribery Convention), which was subsequently ratified by the requisite number of parties and entered into force on 15 February 1999. Thirty-eight countries in all, including eight countries not currently members of the OECD, have now signed and ratified the OECD Anti-Bribery Convention, most recently Israel, which became the first Middle-Eastern country to join the Convention in December 2008.

States that are parties to the OECD Anti-Bribery Convention are bound to provide mutual legal assistance to one another in the investigation and prosecution of offences within the scope of the OECD Anti-Bribery Convention. Moreover, such offences are made extraditable. Penalties for transnational bribery are to be commensurate with those for domestic bribery, and in the case of states that do not recognise corporate criminal liability (eg, Japan), the OECD Anti-Bribery Convention requires such states to enact 'proportionate and dissuasive non-criminal sanctions'.

In terms of monitoring implementation and enforcement, the OECD has set the pace. An OECD working group monitors state parties' enforcement efforts through a regular reporting and comment process. In phase I of the monitoring process, examiners assess whether a country's legislation adequately implements the OECD Anti-Bribery Convention. In phase II, examiners evaluate whether a country is enforcing and applying this legislation. After each phase, the examiners' report and recommendations are forwarded to the government of each participating country and are posted on the OECD's website.

On 4 November 1998, following a series of measures taken since 1996, the member states of the Council of Europe and eight observer states, including the United States, approved the text of a new multilateral convention – the Criminal Law Convention on Corruption. A year later, the parties adopted the Civil Law Convention on Corruption. Forty-one countries have ratified the Criminal Convention, which entered into force on 1 July 2002, while 33 countries have ratified the Civil Convention, which entered into force on 1 November 2003.

The Criminal Convention covers a broad range of offences including domestic and foreign bribery, trading in influence, money laundering and accounting offences. Notably, the Criminal Convention also addresses private bribery. The Criminal Convention sets forth cooperation measures and provisions regarding the recovery of assets. Similar to the OECD Anti-Bribery Convention, the Criminal Convention establishes a monitoring mechanism, the Group of States against Corruption (GRECO), to conduct mutual evaluations.

The Civil Convention provides for compensation for damages that result from acts of public and private corruption. Other measures include civil law remedies for injured persons, invalidity of corrupt contracts and whistle-blower protection. Compliance with the Civil Convention is also subject to peer evaluation.

The African Union Convention on Preventing and Combating Corruption was adopted on 11 July 2003. Twenty-eight of the 43 signatories have ratified the African Union Convention. The Convention covers a wide range of offences including bribery (domestic and foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property. The Convention also guarantees access to information and the participation of civil society and the media in monitoring it.

Other articles seek to ban the use of funds acquired through illicit and corrupt practices to finance political parties and require state parties to adopt legislative measures to facilitate the repatriation of the proceeds of corruption.

Most aggressive, and potentially most important, of all of the international conventions is the United Nations International Convention against Corruption. One hundred and forty countries have signed this Convention, which was adopted by the United Nations General Assembly on 31 October 2003. The Convention entered into force on 14 December 2005 and 132 countries are now party to it.

The United Nations International Convention against Corruption addresses seven principal topics: mandatory and permissive preventive measures applicable to both the public and private sectors, including accounting standards for private companies; mandatory and permissive criminalisation obligations, including obligations with respect to public and private sector bribery, trading in influence and illicit enrichment; private rights of action for the victims of corrupt practices; anti-money laundering measures; cooperation in the investigation and prosecution of cases, including collection actions, through mutual legal assistance and extradition; and asset recovery.

Enforcement

Public dispositions of anti-corruption enforcement actions, media reports of official and internal investigations, disclosures in corporate filings with securities regulatory agencies and stock exchanges, private litigation between companies and former employees, monitoring reports by international organisations, voluntary corporate disclosures, occasional confessions or exposés of implicated individuals, public statements by enforcement officials, statistics compiled by NGOs and international organisations, findings of anti-corruption commissions, World Bank reports and academic studies all provide windows into the fast-changing landscape of enforcement of anti-corruption laws and conventions. Although public knowledge of official investigations and enforcement activity often lags behind, sometimes by years, the available indicators suggest ever-increasing enforcement activity. Without going beyond the public domain, a few recent examples indicate the breadth and diversity of anti-corruption enforcement, including international cooperation, extra-territorial or parallel enforcement, the use of liberalised bank secrecy laws and a growing array of penalties and sanctions.

Germany

In December 2008, German authorities imposed a €395 million penalty against a large German multinational company for making nearly US$1.4 billion in questionable payments as part of a pervasive pattern of widespread bribery in its worldwide operations. The firm had allegedly given hundreds of millions in illicit payments, primarily through intermediaries, to secure large engineering projects throughout the world, employing a variety of means, including off-books accounts, slush funds, 'cash desks', false documentation and other methods intended to conceal the true nature of the graft. The penalty levied by German prosecutors came in the wake of a €201 million fine handed down by a Munich court against the company's telecommunications group in October 2007 for some of the same underlying conduct. These enforcement actions highlight the change in a country that less than a decade ago permitted companies to deduct bribes paid to foreign officials as ordinary business expenses for tax purposes. The prosecution of the company along with the investigation and prosecution of several of its current and former executives also highlight the effect of the mutual legal assistance provisions of the OECD Anti-Bribery Convention, as German prosecutors worked closely with US authorities, which brought parallel enforcement actions against the company, and were also reportedly assisted by Swiss and Italian authorities. In addition to the German and US investigations, press accounts have reported parallel investigations against the company in Argentina, Azerbaijan, China, France, Greece, Hungary, Indonesia, Israel, Italy, Lichtenstein, Nigeria, Norway and Taiwan.

France

In France, authorities are investigating allegations of corruption by a major Paris-based engineering firm. Press accounts have detailed hundreds of millions of dollars in bribes allegedly made to obtain civil-engineering contracts in Brazil, Indonesia, Singapore, Venezuela, and elsewhere. The questionable payments were first discovered by an accounting firm during an audit of a small private Swiss bank. Authorities in Switzerland and Brazil are also investigating these allegations for possible violations of their own national foreign bribery laws. Prosecutors from France, Switzerland and Brazil have reportedly met and agreed to assist one another in their respective investigations.

Israel

In May 2008, press outlets reported that Israeli enforcement officials were investigating Israel's prime minister over bribery allegations dating back to his tenure as mayor of Jerusalem. He is suspected of taking US$500,000 or more from one or more foreign nationals, including a US financier who reportedly admitted to providing him 'cash in envelopes' over a period of more than 10 years. The ensuing controversy led to the prime minister's resignation on 30 September 2008, though he remains in power until a new coalition government is formed and his successor is sworn in. US and Israeli authorities have reportedly been negotiating terms under which the US financier involved would return to Israel to offer additional testimony in the case.

United Kingdom

In October 2008, in the midst of intense criticism by the OECD and others regarding its failure to prosecute incidents of foreign bribery, the United Kingdom's Serious Fraud Office (SFO) instituted a US-style plea bargaining system and entered into its first settlement, imposing a £2.25 million penalty against a UK construction company over 'payment irregularities' at a joint venture the company was a part of in Egypt. Under the SFO's new leadership, the United Kingdom has also devoted additional resources to investigating overseas corruption. In particular, the SFO has put a renewed emphasis into investigating prominent British defence contractor's in Tanzania, South Africa, the Czech Republic and Romania, among other places. Beyond the SFO, the newly formed Overseas Anti-Corruption Unit (OACU) of the City of London Police and the Financial Services Authority of the United Kingdom (FSA) have also sought to crack down on corruption abroad. In September 2008, OACU brought its first case, charging a former government official in Uganda with accepting bribes from a UK-based company that trained Ugandan soldiers. In January 2009, the FSA issued a 'formal notice' to the UK subsidiary of a US-based insurance group and levied a £5.25 million fine on the firm for failing to 'establish and maintain effective systems and controls for countering the risks of bribery and corruption' which caused the firm to make 'suspicious' payments to a number of foreign third parties. The penalty represents the first time that the FSA has moved to enforce its anti-bribery regulations.

United States

In 2008, the US Department of Justice (DoJ) and the SEC resolved 34 enforcement dispositions. These cases involved both US and non-US individuals and corporations, imposed civil and criminal fines of hundreds of millions of dollars, and introduced a new variety of sanctions. Corporate defendants resolved these cases by entering into deferred prosecution agreements, non-prosecution agreements and

plea agreements. In many instances, a condition of settlement has been that the company retain and pay for an 'independent compliance monitor', who is given broad authority under these agreements. At a recent FCPA conference, a high-ranking US enforcement official also revealed that upwards of 100 additional corporations and individuals are currently under active investigation.

Among the recent dispositions brought by US authorities are two record-setting cases against prominent multinational companies. In December 2008, US authorities imposed the largest FCPA penalty to date against the same German multinational company prosecuted by Germany, as well as several of its subsidiaries. The fine totalled a staggering US$800 million, nearly 20 times higher than the prior record FCPA penalty. In settling with the United States, the company provided 'detailed and significant' information regarding third parties involved in its scheme. This information may later be used to prosecute other entities or individuals. US and German authorities collaborated extensively on this investigation, sharing information and evidence on the basis of mutual assistance provisions of the OECD Anti-Bribery Convention. Declaring 2008 'the year of international coordination in enforcement', one US official has stated that the DoJ coordinated with foreign regulators on at least 23 multi-jurisdictional cases last year.

In February 2009, US authorities imposed a US$579 million fine against a major US oil field services corporation and its former subsidiary, a prominent international construction and engineering firm, for US$182 million in illicit payments the former subsidiary made to secure contracts for its joint venture to build a natural gas liquefaction plant in West Africa. The penalty represents the US government's largest sanction against US companies in an FCPA matter to date and follows a September 2008 guilty plea by the former CEO of the one-time subsidiary. In prosecuting this matter, US officials specifically faulted the former subsidiary's efforts to structure its overseas operations to try to avoid liability under US anti-corruption law.

The US has also continued to prosecute a number of matters arising out of the UN's Oil for Food Programme and the investigations of the UN Independent Inquiry Committee. These cases are typically based on alleged violations of the books and records provisions of the FCPA, together with a mix of internal controls, conspiracy and wire fraud charges. The charges generally involve improper payments made by foreign subsidiaries in the form of kickback payments related to the sale of humanitarian goods to Iraq. For jurisdictional reasons, and because kickbacks were paid to Iraqi entities rather than individual Iraqi officials, these cases do not allege that the subsidiaries violated the anti-bribery provisions of the FCPA. Worldwide, the United States has been by far the most aggressive country in pursuing these cases. From February 2007 to March 2009, US authorities brought FCPA enforcement actions against 10 US and non-US companies (along with a number of their subsidiaries) involved in the scandal, with penalties ranging from US$2.9 million to more than US$30 million.

Despite this activity, the number of companies prosecuted for violations documented in the UN Independent Inquiry Committee's report on the scandal has remained small, notwithstanding the large number (more than 2,000) implicated.

This small sample of the diverse array of investigations and prosecutions underway or pending reflects a revolutionary shift in anti-corruption law and a dramatic escalation of enforcement activity compared with only a decade ago.

As yet untested is the provision in article 35 of the United Nations International Convention against Corruption, which creates a private right of action for entities or persons who have suffered damage as a result of bribery of public officials or other acts of corruption covered by the United Nations Convention against Corruption. The United States provides no private right of action consistent with article 35, as it maintained a reservation against this requirement when ratifying the UN Convention. However, a private right of action can be available within the United States through other means. For instance, US law allows those injured in certain circumstances to bring a cause of action and seek compensation under the Racketeering Influenced and Corrupt Organisations Act (RICO); examples of such litigation include *Republic of Iraq v ABB AG, et al*, *Aluminium Bahrain BSC v Alcoa Inc, et al*, and *Grynberg, et al v BP PLC, et al*, all of which were filed last year based on alleged FCPA violations.

Anti-corruption compliance programmes

The rapid changes in legal structures and enforcement have, in turn, contributed to a new corporate phenomenon and legal discipline – the widespread institution of anti-corruption compliance programmes within multinational corporations. Programmes that would have been innovative and exceptional in the early 1990s are becoming de rigueur. 'Best practices' have become a standard by which many companies seek to measure their own efforts and that standard continues to rise. Spurred by government pronouncements, regulatory requirements, voluntary corporate codes and the advice of experts as to what mechanisms best achieve their intended purposes, anti-corruption compliance programmes have become common, and often sophisticated, in companies doing business around the world. As a result, anti-corruption codes and guidelines, due diligence investigations of consultants and business partners or merger targets, contractual penalties, extensive training, internal investigations, compliance audits and discipline for transgressions have become familiar elements of corporate compliance programmes.

Against this backdrop, the expert summaries of countries' anti-corruption laws and enforcement policies that this volume comprises are becoming an essential resource. It is within this legal framework that the implementation of anti-corruption conventions and the investigations and enforcement actions against those suspected of violations will play out. Our thanks to those firms that have contributed to this volume for their timely summaries and for the valuable insights they provide.

United States

Homer E Moyer Jr, James G Tillen, Jeffrey Hahn and Marc Alain Bohn

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1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

The United States is a signatory to and has ratified the OECD Anti-Bribery Convention, the OAS Convention and the United Nations International Convention against Corruption, all with reservations or declarations. The most significant reservations involve declining to specifically provide the private right of action envisioned by the United Nations International Convention against Corruption and not applying the illicit enrichment provisions of the OAS Convention.

The United States is also a signatory to the Council of Europe Criminal Law Convention (Criminal Convention) but has not ratified it.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The principal US law prohibiting bribery of foreign public officials is the Foreign Corrupt Practices Act (FCPA), 15 USC sections 78m, 78dd-1, 78dd-2, 78dd-3, 78ff, enacted in 1977. The principal domestic public bribery law is 18 USC section 201, enacted in 1962. There are no implementing regulations for either statute, other than the regulations governing the Department of Justice's (DoJ) FCPA opinion procedure, under which the DoJ issues non-precedential opinions regarding its intent to take enforcement action in response to specific inquiries. See 28 CFR part 80.

Foreign bribery

3 Legal framework

Describe the individual elements of the law prohibiting bribery of a foreign public official.

The FCPA prohibits the following:

- a covered person or entity;
- corruptly;
- committing any act in furtherance of;
- an offer, payment, promise to pay or authorisation of an offer, payment or promise;
- of money or anything of value;
- to (i) any foreign official, (ii) any foreign political party or party official, (iii) any candidate for foreign political office, or (iv) any other person,
- while 'knowing' that the payment or promise to pay will be passed on to one of the above;
- for the purpose of (i) influencing an official act or decision of that person, (ii) inducing that person to do or omit to do any act in violation of his or her lawful duty, (iii) inducing that person to use his or her influence with a foreign government to affect or influence any government act or decision, or (iv) securing any improper advantage;
- to obtain or retain business, or direct business to any person.

See 15 USC sections 78dd-1(a), 78dd-2(a), 78dd-3(a).

Jurisdiction

Jurisdiction exists over US persons and companies acting anywhere in the world, companies listed on US stock exchanges (issuers) and non-US persons and companies whose actions take place in whole or in part within the territory of the United States (see question 14).

Prohibited acts

Prohibited acts include promises to pay, even if no payment is ultimately made. The prohibitions apply to improper payments made indirectly by third parties or intermediaries, even without explicit direction by the principal.

Corrupt intent

Corrupt intent, described in the legislative history as connoting an evil motive or purpose, is readily inferred from the circumstances, from the existence of a quid pro quo, from conduct that violates local law and even from surreptitious behaviour.

Improper advantage

Added to the statute following the OECD Anti-Bribery Convention, an 'improper advantage' does not require an actual action or decision by a foreign official.

Business purpose

A US court has confirmed that the 'business purpose' element (to obtain or retain business) is to be construed broadly to include any benefit to a company that will improve its business opportunities or profitability.

4 Definition of a foreign public official

How does your law define a foreign public official?

The FCPA defines a 'foreign official' as 'any officer or employee of' or 'any person acting in an official capacity for or on behalf of' 'a foreign government or any department, agency, or instrumentality thereof, or of a public international organization' such as the World Bank. This can include part-time workers, unpaid workers, officers and employees of companies with government ownership or control, as well as anyone acting under a delegation of authority from the government to carry out government responsibilities. The FCPA also applies to 'any foreign political party or official thereof or any candidate for foreign political office'.

In many instances, these persons are not treated as government officials by their own governments. For purposes of the FCPA, however, it is legally irrelevant whether a person is considered a government official by the government at issue. The US law definition is adhered to.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

The FCPA criminalises providing 'anything of value', including gifts, travel expenses, meals and entertainment, to foreign officials, where all the other requisite elements of a violation are met.

In addition, less obvious items provided to 'foreign officials' can violate the FCPA. For example, in-kind contributions, investment opportunities, subcontracts, stock options, positions in joint ventures, favourable contracts, business opportunities, and similar items provided to 'foreign officials' are all things of value that can violate the FCPA.

The FCPA includes an affirmative defence, however, for reasonable and bona fide expenses that are directly related to product demonstrations, tours of company facilities or 'the execution or performance of a contract' with a foreign government or agency. The defendant bears the burden of proving the elements of the asserted defence.

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

The FCPA permits 'facilitating' or 'grease' payments. This narrow exception applies to payments to expedite or secure the performance of 'routine governmental action[s]', which are specifically defined to exclude actions involving the exercise of discretion. As such, the exception generally applies only to small payments used to expedite the processing of permits, licences, or other routine documentation; the provision of utility, police or mail services; or the performance of other non-discretionary functions.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

The FCPA prohibits making payments through intermediaries or third parties while 'knowing' that all or a portion of the funds will be offered or provided to a foreign official. 'Knowledge' in this context is statutorily defined to be broader than actual knowledge: a person is deemed to 'know' that a third party will use money provided by that person to make an improper payment or offer if he or she is aware of, but consciously disregards, a 'high probability' that such a payment or offer will be made. The DoJ has identified a number of 'red flags' – circumstances that, in its view, suggest such a 'high probability' of a payment.

8 Liability

Can both individuals and companies be held liable for bribery of a foreign official?

Both individuals and companies can be held liable for bribery of a foreign official. A corporation may be held liable (even criminally) for the acts of its employees in certain circumstances, generally where the employee acts within the scope of his or her duties and for the corporation's benefit. A corporation may be found liable even when an employee is not and vice versa.

9 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

There is civil and criminal enforcement of the United States' foreign bribery laws. See question 15.

10 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

Both the DoJ and the Securities and Exchange Commission (SEC) have jurisdiction to enforce the anti-bribery provisions of the FCPA. The DoJ has the authority to enforce the FCPA criminally and, in certain circumstances, civilly; the SEC's enforcement authority is limited to civil penalties and remedies for violations by issuers of certain types of securities regulated by the SEC.

11 Self-disclosure of violations

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

The FCPA does not require self-reporting of FCPA violations. Under US securities laws, including the Sarbanes-Oxley Act (SOX), corporations are sometimes required to disclose improper payments or internal investigations into possible improper payments, thereby effectively notifying or reporting to the government.

Following the enactment of SOX, the number of voluntary disclosures of actual or suspected FCPA violations has sharply increased. Enforcement authorities encourage voluntary disclosure of actual or suspected violations and publicly assert that voluntary disclosure, and subsequent cooperation with enforcement authorities, may influence the decision of whether to bring an enforcement action and the choice of penalties sought to be imposed. In short, voluntary disclosure can result in more lenient treatment than if the government were to learn of the violations from other sources. The benefits of voluntary disclosure, however, are not statutorily guaranteed or quantified in advance by enforcement officials.

12 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

FCPA enforcement matters are most often resolved without a trial through plea agreements and settlement agreements such as deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs). As a matter of prosecutorial discretion, some investigations or disclosures are not pursued.

13 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery laws and regulations.

FCPA enforcement has accelerated in recent years, with the number of enforcement actions steadily rising. Sanctions have also become much more severe, with monetary penalties (including fines, disgorgement of profits, and pre-judgment interest) significantly eclipsing those imposed by previous FCPA settlements. In addition to monetary penalties, in recent years companies have consistently been required to retain independent compliance monitors for up to four years and submit to probationary periods under DPAs. Individuals have increasingly been targets of prosecution and have been sentenced to prison terms, fined heavily, or both. In 2008 alone, 20 individuals either resolved or were indicted on FCPA-related charges. Many

recent prosecutions have been based on expansive interpretations of substantive and jurisdictional provisions of the FCPA, and foreign entities have been directly subjected to US enforcement actions.

SOX has encouraged voluntary disclosures, and a number of recent cases have arisen in the context of proposed corporate transactions. US enforcement agencies have also benefited from the cooperation of their counterparts overseas; one prominent US enforcement official even called 2008 'the year of international coordination in enforcement'. Enforcement agencies' expectations for compliance standards continue to rise, as reflected in the compliance obligations imposed on companies in recent settlements.

14 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery under your legal system?

A foreign company that is listed on a US stock exchange or raises capital through US capital markets, and is thus an 'issuer', may be prosecuted for violations of the anti-bribery provisions if it uses any instrumentality of US commerce in taking any action in furtherance of a payment or other act prohibited by the FCPA.

Any foreign person or foreign company, whether or not an 'issuer', may be prosecuted under the FCPA if it commits any act in furtherance of an improper payment while in the territory of the United States.

15 Sanctions

What are the sanctions (including collateral sanctions, such as loss of export privileges) for individuals and companies violating the foreign bribery laws and regulations?

Criminal and civil penalties may be imposed on both individuals and corporations for violations of the FCPA's anti-bribery provisions.

Criminal penalties for wilful violations

Corporations can be fined up to US$2 million per violation. Actual fines can exceed these maximums under alternative fine provisions of the Sentencing Reform Act (18 USC section 3571(d)), which allow a corporation to be fined up to an amount that is the greater of twice the gross gain or twice the gross loss of the pecuniary gain or loss from the transaction enabled by the bribe. Individuals can face fines of up to US$100,000 per violation or up to five years' imprisonment, or both.

Civil penalties

Corporations and individuals can be civilly fined up to US$10,000 per violation. In addition, the SEC or the DoJ may seek injunctive relief to enjoin any act that violates or may violate the FCPA. The SEC may also order disgorgement of ill-gotten gains.

Collateral sanctions

In addition to the statutory penalties, firms may, upon indictment, face suspension and debarment from US government contracting, loss of export privileges and loss of benefits under government programmes, such as financing and insurance. The SEC and the DoJ have also recently required companies to implement detailed compliance programmes and appoint independent compliance monitors (who report to the US government) in connection with settlements of FCPA matters.

16 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving violations of your laws prohibiting bribery of foreign officials.

Recent FCPA cases illustrate a number of trends, including increasing penalties, as well as the pursuit of individuals and non-US persons.

As of 23 February 2009, the largest financial sanction imposed for FCPA violations was an US$800 million penalty (including a fine and disgorgement of profits) levied against the German engineering company Siemens Aktiengesellschaft (Siemens) and its wholly owned subsidiaries in December 2008. This enforcement action was followed shortly by another landmark settlement imposing a combined US$579 million penalty against Halliburton Co (Halliburton), KBR Inc (KBR), and Kellogg, Brown & Root LLC.

On 8 January 2009, an Italian citizen and former executive of a California-based valve company pleaded guilty to conspiring to violate the FCPA's anti-bribery provisions by making roughly US$1 million in illicit payments to foreign officials in a number of countries, including Brazil, China, India, Korea, Malaysia and the United Arab Emirates, in an attempt to obtain or retain business. This former executive was subject to the FCPA through his residency status in the United States and his links to US interstate commerce. He is currently awaiting sentencing, but faces up to five years in prison and a US$100,000 fine.

On 10 December 2008, a Tokyo executive of Bridgestone Corp. pleaded guilty to a two-count felony conspiracy charge, including one count of conspiring to violate the FCPA's anti-bribery provisions by making illicit payments to government officials in Latin America and elsewhere around the world to obtain or retain business. This executive was a Japanese citizen subject to the FCPA through links to US interstate commerce. He was sentenced at the time of his plea to two years in prison and an US$80,000 fine.

On 22 December 2008, the DoJ and the SEC concluded FCPA investigations into Fiat SpA (Fiat) and several of its subsidiaries over payments to government officials in Iraq in connection with the United Nations Oil for Food programme. Fiat and one of its subsidiaries, CNH Global NV, are foreign issuers that had no US operations but had American Depositary Receipts listed on the New York Stock Exchange. While Fiat's other subsidiaries named in the allegations are not listed on US exchanges, Fiat acknowledged responsibility for their actions. In settling, Fiat and its subsidiaries agreed to pay a combined US$17.8 million in criminal and civil penalties.

Financial record keeping

17 Laws and regulations

What laws and regulations require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The FCPA, in addition to prohibiting foreign bribery, requires issuers to keep accurate books and records and to establish and maintain a system of internal controls adequate to ensure accountability for assets. Specifically, the accounting provisions require issuers to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuers' assets. Issuers must also devise and maintain a system of internal accounting controls that assures that transactions are executed and assets are accessed only in accordance with management's authorisation; that accounts of assets and existing assets are periodically reconciled; and that transactions are recorded so as to allow for the preparation of financial statements in conformity with GAAP standards. Issuers are strictly liable for the failure of any of their owned or controlled foreign affiliates to meet the books and records and internal controls standards for the FCPA.

SOX imposes reporting obligations with respect to internal controls. Issuer CEOs and CFOs (signatories to the financial reports) are directly responsible for and must certify the adequacy of both internal controls and disclosure controls and procedures. Management must disclose all 'material weaknesses' in internal controls to the external auditors. SOX also requires that each annual report contain an inter-

nal control report and an attestation by the external auditors of management's internal control assessment. SOX sets related certification requirements (that a report fairly presents, in all material respects, the financial condition and operational results) and provides criminal penalties for knowing and wilful violations.

The securities laws also impose various auditing obligations, require that the issuer's financial statements be subject to external audit and specify the scope and reporting obligations with respect to such audits. SOX also established the Public Company Accounting Oversight Board (PCAOB) and authorised it to set auditing standards.

18 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

The accounting provisions of the FCPA do not themselves require disclosure of a violation (see question 11). US securities laws do, however, prohibit 'material' misstatements and otherwise may require disclosure of a violation of anti-bribery laws. The mandatory certification requirements of SOX can also result in the disclosure of violations.

19 Prosecution under financial record-keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

Although part of the FCPA, the accounting provisions are not limited to violations that occur in connection with the bribery of foreign officials. Rather, they apply generally to issuers and can be a separate and independent basis of liability. Accordingly, there have been many cases involving violations of the recordkeeping or internal controls provisions of the FCPA that are wholly unrelated to foreign bribery.

At the same time, charges of violations of the accounting provisions are commonly found in cases involving the bribery of foreign officials. In situations in which there is FCPA jurisdiction under the accounting provisions but not the anti-bribery provisions, cases have been settled with the SEC under the accounting provisions with no corresponding resolution under the anti-bribery provisions.

20 Sanctions for accounting violations

What are the sanctions for violations of the accounting laws and regulations associated with the payment of bribes?

For accounting violations of the FCPA, the SEC may impose civil penalties, seek injunctive relief, enter a cease and desist order and require disgorgement of tainted gains. Civil fines may be up to a maximum of US$500,000 or the gross amount of pecuniary gain per violation. Neither materiality nor 'knowledge' is required to establish civil liability: the mere fact that books and records are inaccurate, or that internal accounting controls are inadequate, is sufficient. Through its injunctive powers, the SEC can impose preventive internal control and reporting obligations.

The DoJ has authority over criminal accounting violations. Persons may be criminally liable under the accounting rules if they 'knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account' required to be maintained under the FCPA.

Penalties for criminal violations of the FCPA's accounting provisions are the same penalties applicable to other criminal violations of the securities laws. 'Knowing and wilful' violations can result in fines up to US$25 million. Like the anti-bribery provisions, however, the accounting provisions are also subject to the alternative fine provisions (see question 15).

21 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

US tax laws prohibit the deductibility of domestic and foreign bribes. See 26 USC section 162(c)(1).

Domestic bribery

22 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

The domestic criminal bribery statute prohibits:

- directly or indirectly;
- corruptly giving, offering or promising;
- something of value;
- to a public official;
- with the intent to influence an official act.

See 18 USC section 201(b)(1).

Directly or indirectly

The fact that an individual does not pay a bribe directly to a public official, but rather does so through an intermediary, does not allow that individual to evade liability.

Something of value

'Anything of value' can constitute a bribe; accordingly, a prosecutor does not have to establish a minimum cost of the item or service at issue or the exact value of the bribe. Rather, the focus is on the subjective value the recipient places on the item or service.

Public official

The recipient may be either a 'public official' or a person selected to be a public official. (See question 24.)

Official act

The prosecutor must prove a quid pro quo – the bribery statute is violated only where something is given or offered in exchange for the performance of a specific official act. An 'official act' includes duties of an office or position, whether or not statutorily prescribed. For members of Congress, for example, an 'official act' is not strictly confined to legislative actions but can encompass a congressman's attempt to influence a local official on a constituent's behalf.

23 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

In addition to punishing the payment of a bribe, the federal bribery statute prohibits public officials and those who are selected to be public officials from soliciting or accepting a bribe, or both, with the intent to be influenced in the performance of an official act (see 18 USC section 201(b)(2)).

24 Public officials

Are any public officials not covered or accorded different treatment under these laws?

All federal public officials are subject to the criminal bribery statute. The term 'public official' includes 'a person acting for or on behalf of the United States', which the Supreme Court has defined as someone who 'occupies a position of public trust with official federal responsibilities'. Accordingly, lower courts have broadly construed 'public official' to include low-level officials and private contractors working

for the government.

Because the bribery statute applies only to the bribery of federal public officials, officials of the various state governments are exempt from the statute's reach. However, there are other federal statutory provisions that can be used by prosecutors to also prosecute the bribery of state public officials, as well as those attempting to bribe them. Specifically, the federal mail and wire fraud statutes prohibit the use of the mail system, phone or internet to carry out a 'scheme to defraud', which includes a scheme to deprive another of 'honest services'. Under these provisions, state public officials who solicit bribes, and private individuals who offer them, can be prosecuted for defrauding the state's citizens of the public official's 'honest services'. Of course, 'honest services' fraud can also be used to prosecute the bribery or attempted bribery of federal officials. In addition, the bribing of state public officials is also prohibited by the laws of each state.

25 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

The extent to which public officials may participate in outside commercial activities while serving as a public official varies by branch of government. For 2009, members of Congress are prohibited by statute from earning more than US$26,500 in outside income. Members of Congress are also prohibited by statute from receiving any compensation from an activity that involves a fiduciary relationship (eg, attorney-client) or from serving on a corporation's board of directors. With respect to the executive branch, presidential appointees – such as cabinet secretaries and their deputies – are prohibited from earning any outside income whatsoever. While career civil servants in the executive branch who are not presidential appointees may earn an outside income, they may not engage in outside employment that would conflict with their official duties. For example, a civil servant working for an agency that regulates the energy industry may not earn any outside income from work related to the energy industry.

26 Travel and entertainment

Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

The giving of gifts, or 'gratuities', to public officials is regulated by a criminal statute applicable to all government officials and by regulations promulgated by each branch of government that establish specific gift rules for its employees. The criminal gratuities statute applies both to the providing and receiving of gifts, while the regulations apply only to public officials receiving gifts. However, ethics reform legislation enacted in 2007 now makes it a crime – for the first time – for registered lobbyists and organisations that employ them, to knowingly provide a gift to a member of Congress that violates legislative branch ethics rules.

The statutory provision that prohibits the payment and solicitation of gratuities is contained within the same statute that prohibits bribery (18 USC section 201). The basic elements of the statute's gratuities provision overlap substantially with the elements of bribery, except that a gratuity need not be paid with the intent to influence the public official. Rather, a person can be convicted of paying a gratuity if he or she gives or offers anything of value to the public official 'for or because of' any official act performed or to be performed. Thus, for example, a gift given to a senator as an expression of gratitude for passing favourable legislation could trigger the gratuities statute, even though the gift was not intended to influence the senator's actions (since it was given after the legislation was already passed).

In addition to the criminal gratuities statute, each branch of government regulates the extent to which its employees may accept gifts. In effect, these regulations prohibit certain gifts that would otherwise not be prohibited by the criminal gratuities statute.

With respect to the executive branch regulations, employees of any executive branch department or agency are prohibited from soliciting or accepting anything of monetary value from any person who does or seeks to do business with the employee's agency, performs activities regulated by the employee's agency, seeks official action by the employee's agency, or has interests that may be substantially affected by the performance or non-performance of the employee's official duties. Unlike the criminal statute, which requires some connection with a specific official act, the executive branch gift regulations can be implicated even where the solicitation of a gift from an interested party is unconnected to any such act. In addition, career civil servants may not accept gifts having an aggregate market value of US$20 or more per occasion, and may not accept gifts having an aggregate market value of more than US$50 from a single source in a given year. The gift rules are even stricter for presidential appointees: under an Executive Order signed by President Obama during his first week in office, Executive Branch officials appointed by the President cannot accept *any* gifts from registered lobbyists, even those having a market value of less than US$20.

Under the Rules of the Senate and House of Representatives, members of Congress may not accept a gift worth US$50 or more or multiple gifts from a single source that total US$100 or more for a given calendar year. These limits also apply to gifts to relatives of a member, donations by lobbyists to entities controlled by a member, donations made to charities at a member's request and donations to a member's legal defence fund. Under recently passed ethics reform legislation in both the House and the Senate, however, the US$50 gift exceptions are no longer available to registered lobbyists, entities that retain or employ lobbyists, or agents of a foreign government (but the foreign government itself may still provide such gifts). This legislation also imposed additional restrictions on gifts from lobbyists, including prohibiting members from receiving reimbursement or payment in kind for travel when accompanied by a registered lobbyist, or for trips that have been organised by a lobbyist. In addition, the House of Representatives recently barred members from accepting refreshments from lobbyists in a one-on-one setting. Most significantly, registered lobbyists can face up to a five year prison term for knowingly providing gifts to members of Congress in violation of either the House or Senate ethics rules.

27 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

As noted in the answer to question 26, members of Congress may accept gifts that are worth less than US$50 (except from lobbyists or agents of a foreign government), but the aggregate value of such gifts from a single source in a given calendar year must be less than US$100. In addition to gifts under the US$50 dollar limit, the House and Senate Rules exempt contributions to a member's campaign fund from the restrictions on gifts, food and refreshments of nominal value other than a meal, and informational materials like books and videotapes, among other low-value items. Finally, the House and Senate ethics rules also contain a 'widely attended event' exception that allows members (and their staffers) to attend sponsored events, free of charge, where at least 25 non-congressional employees will be in attendance and the event relates to their official duties.

The executive branch regulations similarly include exceptions for nominal gifts, such as those having a market value of US$20 or less (although presidential appointees may not accept any gift from a registered lobbyist), gifts based on a personal relationship and hon-

Update and trends

Domestic bribery

The federal mail and wire fraud statutes have been increasingly used by prosecutors to prosecute domestic bribery cases, under the theory that a public official is depriving his constituents of 'honest services' when he accepts a bribe. This honest services fraud theory – which prosecutors most recently used to arrest former Illinois Governor Rod Blagojevich for soliciting campaign donations from potential appointees to President Obama's vacant Senate seat – has come under increasing criticism for its broad reach, as it has also been used to prosecute commercial corruption cases. But because of its versatility and relatively low liability threshold – it does not require prosecutors to show a quid pro quo as the bribery statute does – the honest services wire and mail fraud statutes will likely continue to be a favoured weapon of prosecutors until the Supreme Court, or Congress, clarifies the law.

Foreign bribery

Over the past several months, US enforcement authorities have handed out the largest sanctions ever imposed for violations of the FCPA, including combined monetary fines of US$800 million against Siemens and its subsidiaries and US$579 million against Halliburton, KBR and its subsidiary. In 2007 and 2008, the DoJ and SEC resolved over 70 enforcement actions, more than all prior years of FCPA enforcement combined, and, according to US enforcement officials, this pace is not likely to decrease. There are currently roughly 100 open FCPA investigations, the US government is devoting more resources to enforcement than it ever has before, and international cooperation and coordination in enforcement is at an all-time high.

ourary degrees. De minimis items such as refreshments and greeting cards are also excluded from the definition of 'gift' (see 5 CFR section 2635.203(b)). Executive Branch officials may accept such gifts even if they are given because of his or her official position. Like the House and Senate Rules, the executive branch regulations also contain a 'widely-attended gathering' exception, although a key difference is that the employing agency's ethics official must provide the employee with a written finding that the importance of the employee's attendance to his or her official duties outweighs any threat of improper influence. The executive branch regulations also permit officials travelling abroad on official business to accept food and entertainment, as long as it does not exceed the official's per diem and is not provided by a foreign government. Under the recent Executive Order signed by President Obama, however, neither the widely-attended gathering exception nor the exception for food and entertainment in the course of foreign travel are available to presidential appointees.

28 Private commercial bribery

Does your country also prohibit private commercial bribery?

Private commercial bribery is prohibited primarily by various state laws, among which there is considerable variation. New York, for example, has a broad statute that makes it an offence to confer any benefit on an employee, without the consent of his employer, with the intent to influence the employee's professional conduct.

While there is no federal statute that specifically prohibits commercial bribery, there are a handful of statutes that can be used by prosecutors to prosecute commercial bribery cases. First, the mail and wire fraud statutes prohibit the use of the mail system, phone or internet to carry out a 'scheme to defraud', which includes a scheme to deprive another of 'honest services'. A bribe paid to an employee of a corporation has been classified as a scheme to deprive the corporation of the employee's 'honest services', and thus can be prosecuted under the mail and wire fraud statutes. Second, the so-called 'federal funds bribery statute' prohibits the payment of bribes to any organisation -- which can include a private company -- that in any one year receives federal funds in excess of US$10,000, whether through a grant, loan, contract, or otherwise. Finally, a federal statute known as the 'Travel Act' (18 USC. section 1952) makes it a federal criminal offence to commit an 'unlawful act' – which includes violating state commercial bribery laws – if the bribery is facilitated by travelling in interstate commerce or using the mail system. Thus, if an individual travels from New Jersey to New York in order to effectuate a bribe, that individual can be prosecuted under the federal Travel Act for violating New York's commercial bribery law. A violation of the Travel Act based on violating a state commercial bribery law can result in a prison term of five years and a fine. Finally, commercial bribery is also actionable as a tort in the civil court system.

29 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery laws and regulations?

Under the federal bribery statute, both the provider and recipient of a bribe in violation of the federal bribery statute can face up to 15 years' imprisonment. Moreover, either in addition to or in lieu of a prison sentence, individuals who violate the bribery statute can be fined up to the greater of US$250,000 (US$500,000 for organisations) or three times the monetary equivalent of the bribe. Under the gratuities statute, the provider or recipient of an illegal gratuity is subject to up to two years' imprisonment or a fine of up to US$250,000 (US$500,000 for organisations) or both.

Senior presidential appointees and members of Congress who violate the statute regulating outside earned income can face a civil enforcement action, which can result in a fine of US$10,000 or the amount of compensation received, whichever is greater. Government employees who violate applicable gift and earned income regulations can face disciplinary action by their employing agency or body. Registered lobbyists can face up to a five year prison term for knowingly providing gifts to members of Congress in violation of either the House or Senate ethics rules.

30 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

The domestic bribery statute does not contain an exception for grease payments. The statute covers any payment made with the intent to 'influence an official act' and the statutory term 'official act' includes non-discretionary acts. Courts have held, however, that if an official demands payment to perform a routine duty, a defendant may raise an economic coercion defence to the bribery charge.

31 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving violations of domestic bribery laws, including any investigations or decisions involving foreign companies.

Perhaps the most notorious recent bribery case in the United States is the arrest of former Illinois Governor Rod Blagojevich on federal corruption charges. Although the complaint accuses Governor Blagojevich of a wide variety of corrupt behaviour, the most attention-grabbing accusations concerned his attempts to essentially auction off the Senate seat vacated by Senator Barack Obama's election to the presidency (in the United States, if a senator is unable to fulfil his or her term in office, the governor must appoint a replacement for the remainder of the senator's term). Specifically, Governor Blagojevich reportedly sought substantial campaign contributions from would-be appointees to the vacant Senate seat, which prosecutors alleged was a scheme to deprive the citizens of Illinois of 'honest services', in violation of the federal mail and wire fraud statutes. Given that Governor Blagojevich is not a federal official – his alleged offences would seemingly be the province of Illinois state law – the complaint illustrates the reach of federal anti-corruption law.

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