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An Assessment of the Impact of the Foreign Corrupt Practices Act over Its Forty-Year History

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Introduction

Corruption is one of the greatest impediments to economic and social development around the world. Businesses and individuals pay an estimated $1.5 trillion in bribes each year.[1] This article examines the impact that the Foreign Corrupt Practices Act (FCPA)[2] has had on the fight against international corruption since its enactment in December 1977.

Enforcement of the FCPA remained relatively dormant during the first twenty-five years after its enactment. A dramatic increase in enforcement actions and in the amount of penalties and fines assessed began around the 2004–2007

period and has rocketed dramatically upward over the last ten years. Today, the FCPA represents one of the most significant compliance risks that U.S. companies face in conducting overseas business.

But the impact of the FCPA goes well beyond the number of enforcement actions commenced or the amount of penalties and fines imposed. It served as the catalyst and foundation for the adoption of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.[3] The OECD Convention obligates each of the signatory nations to enact laws that criminalize the bribery of foreign officials. The Working Group of the OECD Convention pressures the signatory countries to strengthen and enforce their anti-corruption laws.

The FCPA enforcement actions taken by U.S. enforcement authorities also served as a model for other countries and has led to increasing multilateral cooperation and enforcement.

The result has been the establishment of a multilateral legal framework in the fight against corruption. Importantly, corruption is no longer accepted as the norm; it is seen, correctly, as a significant impediment to the economic and social development of many developing countries.

Nevertheless, as discussed further below, this international effort has barely scratched the surface in the effort to combat corruption.

Evolution of the Enforcement of the FCPA

The FCPA is a by-product of the Watergate scandal. As a result of revelations of unreported campaign contributions uncovered during the Watergate investigations, the U.S. Securities and Exchange Commission (SEC) initiated an investigation of undisclosed payments to domestic and foreign governments and politicians. It learned that over 200 corporations had made questionable foreign payments. As a result of these revelations and testimony before Congress, a consensus developed in Congress that foreign bribes were not only unethical but also bad business.

The FCPA entered into law on December 19, 1977. It established criminal and civil penalties for illicit payments made to foreign officials by U.S. companies and U.S. nationals. It imposed certain accounting requirements on public companies.[4]

The law was in many ways revolutionary. It applied a criminal law extraterritorially to U.S. companies and U.S. nationals that engaged in the bribery of foreign officials, irrespective of local laws or local enforcement and without regard to local customs and practices.[5] Virtually no other country had a law similar to the FCPA.[6]

During the initial twenty-five years after its enactment, the FCPA was infrequently enforced. From the enactment of the FCPA in 1977 to the end of 2003, the U.S. Department of Justice (DOJ) brought thirty criminal prosecutions and five civil injunction actions. The SEC brought fifteen civil enforcement actions. The total fines, fees, and penalties levied by the DOJ and SEC during this period totaled approximately $59.5 million.[7]

I first became acquainted with the FCPA during unsuccessful efforts by the Reagan administration in the early 1980s to amend the FCPA. In the mid 1980s, I was the only attorney in a large law firm that knew what the initials "FCPA" stood for when a major U.S. company requested legal advice on an FCPA issue. I spoke at numerous conferences and seminars on the FCPA during the 1980s and 1990s. As a general rule, there were more speakers at these conferences than attendees. During overseas training, the common mantra was: "You don't understand how business is done in the real world." Clearly, the FCPA had minimal impact on international business activity during this period.

The change in the enforcement environment began during the period from 2004 to 2007. The number of DOJ and SEC enforcement actions increased from five in 2005 to fifteen in 2006 to thirty-eight in 2007. In the prosecution of the Swiss engineering firm ABB Ltd., in July 2004, involving illicit payments made by its subsidiaries in Nigeria, Angola, and Kazakhstan, the SEC imposed, for the first time in an FCPA case, the remedy of disgorgement of profits (plus prejudgment interest).[8] The use of the disgorgement remedy has contributed significantly to the tremendous upsurge in the amount of penalties and fines imposed on FCPA cases since 2004.

In 2007, the DOJ and SEC prosecuted Baker Hughes, Inc. for bribes paid in regard to oil contracts in Kazakhstan. The SEC and DOJ imposed combined penalties and fines totaling $44 million, the highest combined penalties at the time.[9]

In 2008, FCPA enforcement rocketed upward dramatically. The enforcement action against Siemens AG and three of its subsidiaries resulted in criminal and civil fines totaling $800 million, the largest settlement in FCPA history.[10] The SEC

portion included a disgorgement payment in the amount of $350 million. On the same date, Siemens settled outstanding corruption charges filed by the German government of approximately $569 million. This settlement was in addition to the payment of $290 million already levied by a court in Munich, Germany.[11] Thus, Siemens paid a combined fine of $1.6 billion to U.S. and German authorities. This prosecution also marked the first significant collaborative multilateral enforcement effort.

Several months later, the DOJ and SEC entered into a settlement with Kellogg Brown and Root LLC for a combined fine of $579 million.[12]

These record fines sent a strong message that the U.S. government would aggressively enforce the FCPA. They also marked a significant development in the multilateral cooperation on anti-corruption enforcement.[13] Both trends have continued unabated to the present. The fines and penalties imposed over the past ten years were unimaginable in 1977.

There are a number of notable developments that contributed to this wave of increased enforcement and penalties. Some of these developments are discussed in the following sections.

Prosecution of Foreign Companies and Foreign Nationals

The aggressive prosecution of foreign companies and foreign nationals has been a significant development in the enforcement of the FCPA.

The FCPA has, since its inception, applied to issuers—companies that have a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 ("Exchange Act") or that are required to file reports under section 15(d) of the Exchange Act.[14] This includes foreign companies whose stocks are listed on national securities exchanges such as the New York Stock Exchange or are quoted on NASDAQ.[15] These foreign companies had not generally been subjected to the FCPA compliance culture that has developed in the United States since the enactment of the FCPA. They were ripe for anti-corruption enforcement action. In fact, ten of the twelve largest penalties imposed by the DOJ/SEC for FCPA violations have been imposed against foreign issuers.[16]

The 1998 amendments to the FCPA eliminated the differing treatment between U.S. and foreign nationals who are employees or agents of a U.S. company or an issuer. Previously, only U.S. nationals and permanent residents were

subject to both civil and criminal penalties; foreign non-resident nationals were only subject to civil penalties. The amendment eliminated this disparity, subjecting foreign national employees of U.S. companies or foreign issuers to criminal liability.[17] This led to a number of prosecutions of foreign national employees of foreign companies who are issuers under the FCPA.[18]

The 1998 amendments to the FCPA also significantly expanded the scope of the FCPA to cover foreign natural and legal persons who commit an act in furtherance of the bribery of a foreign official "while in the territory of the United States."[19] The DOJ has taken an aggressive position in its enforcement of foreign companies under this provision. In its Resource Guide to the FCPA, the DOJ asserts that subject matter jurisdiction exists over foreign nationals and foreign companies if they engage, either directly or through an agent, in any act in furtherance of a corrupt act while in the territory of the United States.[20] This includes instances in which a foreign national or foreign company "causes" its agent to carry out such an act within the territory of the United States.[21]

This expansive interpretation and enforcement of the extraterritorial application of the FCPA by the DOJ has resulted in significant enforcement actions against foreign companies and foreign nationals.[22]

The DOJ has brought several FCPA enforcement actions against foreign subsidiaries of U.S. companies or issuers on the grounds that the foreign subsidiaries acted as agents of their parent companies. For example, DPC (Tianjin) Co. Ltd., a wholly owned Chinese subsidiary of Diagnostic Products Corporation (DPC), a U.S. company, pled guilty to a violation of the FCPA for improper payments made to government physicians and laboratory personnel in China. DPC had no knowledge of and did not authorize the improper conduct. The plea agreement charged the Chinese subsidiary with being an "agent of DPC" and specified the use of an instrumentality of interstate commerce as the jurisdictional nexus.[23] It provided no factual support for the assertion that DPC (Tianjin) Co. Ltd. was an "agent" of DPC. The legal basis for this position appears tenuous.

The SEC's Evolving Application of the FCPA

Several changes in SEC enforcement have also had a significant impact on the increased number of enforcement actions and the amount of the fines and penalties imposed.

Beginning in 2004 in the enforcement action against the Swiss engineering firm ABB Ltd.,[24] the SEC required disgorgement of profits (plus prejudgment interest). Disgorgement is an equitable remedy authorized by the Exchange Act to prevent unjust enrichment.[25] Since then, it has become a powerful enforcement tool for the SEC. Most FCPA enforcement actions brought by the SEC include a disgorgement remedy, even where the violations are limited to books and records and internal controls and do not include anti-bribery violations. The disgorgement amounts have ranged from as low as $259,000[26] to as high as $457 million.[27]

In addition, the SEC has applied the accounting requirements for issuers in a strict liability manner for the improper payments made by their foreign subsidiaries, even where the parent company (the issuer) had no knowledge of and did not authorize the misconduct.[28] This appears to have started with the enforcement case against Chiquita Brands[29] for the alleged conduct of its Colombian subsidiary in paying a $300,000 bribe to obtain a renewal of its permit for a port facility. The parent company had no knowledge of the improper conduct and had compliance procedures in place to prevent such conduct.[30] The SEC thereafter initiated numerous enforcement actions against issuers (both U.S. and foreign companies) for books-and-records and internal accounting control violations for the improper conduct of their subsidiaries, where the parent company had no knowledge of and did not participate in or authorize the alleged improper conduct.[31]

The Adoption of FCPA Compliance Programs

The DOJ and SEC have taken a number of important steps, in the enforcement of the FCPA, to foster and encourage the development of an anti-corruption compliance culture in U.S. companies. This has in turn led to the development of a significant support system of compliance professionals to assist in these efforts. While impossible to measure, these actions appear to have had some moderating effect on reducing international corruption by U.S. companies.

The SEC and DOJ began to make clear in their enforcement actions, beginning around 2006[32] and continuing thereafter, that the adequacy of an FCPA compliance program was an important element of an adequate system of internal controls.[33] This includes conducting appropriate due diligence on agents and distributors[34] and providing FCPA training of employees and agents.[35]

The Resource Guide reinforced this position: "An effective compliance program is a critical component of an issuer's internal controls."[36] The Resource

Guide identified some of the elements of an effective compliance program.[37] It also recognized that, without a culture of compliance within an organization, the compliance program will generally not be effective.[38]

The DOJ began to articulate the elements of a compliance program in its settlement agreements.[39] The existence and effectiveness of a company's compliance program is also one of the factors enforcement authorities consider in deciding whether to prosecute and what charges to bring.[40] In addition, the U.S. Sentencing Commission's Guidelines for the sentencing of organizations emphasize the existence of an effective compliance program in determining the fines and other penalties to be imposed on a company.[41] An effective compliance program can reduce significantly the amount of the fine.[42] The DOJ recently issued a guidance document on compliance programs, entitled "Evaluation of Corporate Compliance Programs."[43] This document provides some guidance on what the DOJ would consider in evaluating the effectiveness of a compliance program.[44]

The Evolution of Multilateral Enforcement Efforts Against Corruption

One of the strong criticisms of the FCPA, from its inception, has been that it created an uneven playing field for U.S. companies. This was true. While U.S. companies faced the possibility of an enforcement action for improper payments to foreign officials, foreign competitors had no similar constraint. While local foreign laws generally prohibit bribery, those laws were rarely enforced. This placed U.S. companies at a competitive disadvantage vis à vis their foreign competitors.[45]

In an effort to level the playing field, Congress included a provision in the 1998 amendments to the FCPA that directed the U.S. government to negotiate an anti-bribery convention with the OECD member nations.[46] After a number of unsuccessful efforts,[47] and to the surprise of many observers including this author, the effort resulted in the adoption of the OECD Convention, which came into force on February 15, 1999. The OECD Convention obligated each signatory nation to adopt laws that criminalize the bribery of foreign officials. There are, today, forty-four signatories to the OECD Convention.[48] In effect, there are now forty-four FCPA-type laws.

The OECD Convention represented a critical turning point in the fight against international corruption. It reflected a sea change internationally in both the attitude about and the enforcement of corruption. It has had the most significant impact on the international anti-corruption effort. But it was the FCPA that served as the standard and model and the impetus for the adoption of the OECD Convention. Without the FCPA, there would probably not be an OECD Convention. And it has been the FCPA enforcement actions undertaken by the DOJ/SEC that have provided a model for other countries in the enforcement of their own anti-corruption laws.

The 2008 anti-corruption enforcement action brought against Siemens AG by German authorities perhaps best demonstrates this sea change. Previously, German companies could deduct bribery expenditures from their taxes as a business expense.[49]

Importantly, the OECD Convention established a Working Group on Bribery to review, monitor, and comment upon the legislation enacted by each nation to implement the OECD Convention, and its enforcement by these nations.[50] In addition, it contained a strong provision for mutual assistance. This has encouraged cooperation and collaboration between U.S. enforcement authorities and their foreign counterparts in the fight against corruption.[51] It has become much easier to gather documents and information abroad.

This has led to a significant increase in multilateral anti-corruption enforcement efforts. It has also resulted in countries sharing the fines and penalties assessed.

Some noteworthy multilateral enforcement cases include the global foreign bribery enforcement action against VimpelCom Ltd., a Netherlands-based telecommunications company and an issuer under the FCPA, for bribery payments in Uzbekistan. The company paid combined U.S. and Dutch criminal and regulatory penalties in the amount of $795.3 million.[52]

The global anti-corruption enforcement action against Rolls Royce plc by the United States, United Kingdom, and Brazil resulted in a global settlement of approximately $800 million.[53] Rolls Royce, a U.K.-based manufacturer and distributor of power systems for the aerospace, defense, marine, and energy sectors, engaged in corruption in numerous countries. It agreed to pay a criminal penalty

to the DOJ in the amount of approximately $195 million, a penalty to the United Kingdom's Serious Fraud Office in the amount of approximately $604 million, and a penalty of approximately $25 million to Brazilian authorities.[54]

The 2016 Odebrecht case perhaps best reflects the changed international enforcement environment. Odebrecht S.A., a global construction company based in Brazil, and Braskem S.A., a Brazilian petrochemical company that is a subsidiary of Odebrecht and an issuer under the FCPA, agreed to pay a combined penalty of at least $3.5 billion to U.S., Brazil, and Swiss enforcement authorities for corruption activities in many countries.[55] Brazilian enforcement authorities aggressively prosecuted this case in collaboration with the U.S. enforcement authorities. The United States and Switzerland will each receive 10% of the total criminal fine and Brazil will receive 80%.

Most recently, U.S., Dutch, and Swedish enforcement authorities collaborated in attaining a global foreign bribery settlement with Telia Company AB, a Stockholm-based telecommunications company, and its Uzbek subsidiary Coscom LLC, arising out of a scheme to pay bribes in Uzbekistan.[56] Telia and Coscom paid a combined total amount of $965 million in criminal and regulatory penalties to the United States, the Netherlands, and Sweden.[57]

Nevertheless, enforcement actions by the signatory countries to the OECD Convention remain uneven. Since the entry into force of the OECD Convention through 2016, twenty countries have sanctioned individuals and companies under criminal or administrative proceedings for foreign bribery. But twenty-four countries have yet to conclude an enforcement action. The United States has undertaken, by far, the most enforcement actions, followed by Germany, Hungary, Italy, the United Kingdom, France, Switzerland, and Belgium.[58]

Conclusion

The impact of the FCPA in the fight against corruption has generally been far more impactful than could have been envisioned in 1977. It has led to the globalization of anti-corruption enforcement, something unimaginable forty years ago. This enforcement effort began with the FCPA and expanded exponentially from there. Corruption is no longer accepted as the norm. It is recognized as an

aberration, which adversely impacts economic development. When conducting training overseas, I still encounter—but much less frequently—the mantra "You don't understand how business is done here."

The risk of enforcement for a possible violation of the FCPA and the compliance culture that has grown up in the United States around the FCPA have, in fact, brought about change to U.S. companies doing business abroad. Companies increasingly view anti-corruption compliance as an asset. Generally, it has become more cost-effective to adopt and implement an anti-corruption compliance program than to risk possible prosecution for a violation.

Nevertheless, from my limited vantage point as an FCPA practitioner, I would estimate that more than half of U.S. companies doing business abroad, especially small- and medium-sized businesses, still lack effective anti-corruption compliance programs and have only a rudimentary understanding of the FCPA. In most of the other signatory countries to the OECD Convention, the adoption of compliance programs is still in its infancy, as enforcement is still in its early stages.

In effect, the international enforcement of anti-corruption laws, despite some very large penalties and extensive publicity surrounding some enforcement actions, has barely scratched the surface in the fight against bribery. It is an important step in that direction. But it needs to be recognized and acknowledged that corruption continues unabated. It remains endemic to many countries around the world. One of the enduring challenges for those living with corruption on a daily basis is how to change the culture of corruption.[59] Irrespective of the multilateral legal and enforcement efforts that have developed over the past forty years, the battle has barely begun.

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NOTES

1. *Combating Corruption*, World Bank (Sept. 26, 2017), www.worldbank.org/en/topic/governance/brief/anti-corruption; *see also Corruption: Costs and Mitigating Strategies*, Int'l Monetary Fund (May 11, 2016).
2. Foreign Corrupt Practices Act of 1977 (FCPA), Pub. L. No. 95-213, 91 Stat. 1494 (amended 1988 and 1998).
3. Organization for Economic Cooperation and Development [OECD], *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Nov. 21, 1997) [hereinafter OECD Convention], www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf. The OECD is an international organization that promotes economic progress and international trade.
4. The U.S. Department of Justice enforces the bribery provisions; the SEC enforces the accounting requirements.
5. The FCPA prosecutes the so-called supply side of the bribery—the companies and individuals paying the bribes, not the foreign officials who receive the bribes.
6. Sweden had one of the very few criminal laws that arguably dealt with the bribery of foreign officials, although there had not been any prosecution of foreign bribery by Swedish authorities. Lag om ändring i brottsbalken (Svensk författningssamling) [SFS] 1977:103 (Swed.) (entered into force Jan. 1, 1978).
7. *See* Shearman & Sterling LLP, FCPA Digest: Cases and Review Release Relating to Bribes to Foreign Officials Under the Foreign Corrupt Practices Act of 1977 (Jan. 2018), https://shearman.symplicity.com/files/32a/32ae4f446d680242c4eb148b7af145eb.pdf.
8. Disgorgement and prejudgment interest totaled $5.9 million. *See* SEC v. ABB Ltd., Accounting and Auditing Enforcement Release No. 2049 (July 6, 2004), www.sec.gov/litigation/litreleases/lr18775.htm.
9. *See* Press Release No. 07-296, U.S. Dep't of Justice, Baker Hughes Subsidiary Pleads Guilty to Bribing Kazakh Official and Agrees to Pay $11 Million Criminal Fine as Part of Largest Combined Sanction Ever Imposed in FCPA Case (Apr. 26, 2007), www.justice.gov/archive/opa/pr/2007/April/07_crm_296.html; SEC Release 2007-77 (Apr. 26, 2007). The criminal penalty was $11 million; the disgorgement amount was $33 million.
10. *See* Press Release No. 08-1105, U.S. Dep't of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay $450 Million in Combined Criminal Fines (Dec. 15, 2008), www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html; SEC Press Release No. 2008-294 (Dec. 18, 2008).
11. Eric Lichtblau & Carter Dougherty, *Siemens to Pay $1.34 Billion in Fines*, N.Y. Times (Dec. 15, 2008), www.nytimes.com/2008/12/16/business/worldbusiness/16siemens.html.
12. *See* Press Release No. 09-112, U.S. Dep't of Justice, Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $402 Million Criminal Fine

(Feb. 11, 2009), www.justice.gov/opa/pr/kellogg-brown-root-llc-pleads-guilty-foreign-bribery-charges-and-agrees-pay-402-million.

13. During this time period, a number of other actions occurred to strengthen the multilateral legal framework against corruption. The United Nations Convention Against Corruption was adopted on December 14, 2005. United Nations Convention against Corruption, Dec. 9, 2003, GA res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004). This convention requires signatory countries to criminalize the bribery of national public officials, foreign public officials, and bribery in the private sectors. It currently has 186 signatories. The World Bank authorized a sanctions process against companies and individuals engaged in corruption on bank financed projects in 2004. The first sanction was imposed in June 2008. World Bank Group Sanctions Regime: An Overview 13 (2010), siteresources.worldbank.org/EXTOFFEVASUS/Resources/Overview-SecM2010-0543.pdf. On April 14, 2010, the World Bank and four other multinational financial institutions (the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, and the African Development Bank) signed the Agreement for Mutual Enforcement of Debarment Decisions. Under this agreement, firms and individuals debarred by one of these banks may be sanctioned for the same misconduct by the other financial institutions. There are more than 700 firms and individuals that have been debarred or cross-debarred from the award of a World Bank financial contract due to fraud or corruption.
14. 15 U.S.C. § 78m(b)(2); *see* 15 U.S.C. §§ 78*l*, 78o(d).
15. As of December 31, 2011, 965 foreign companies were registered with the SEC. *See* U.S. Dep't of Justice & U.S. Sec. & Exch. Comm'n, A Resource Guide to the U.S. Foreign Corrupt Practices Act 11 (Nov. 14, 2012; rev. June 2015) [hereinafter Resource Guide], www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf. The DOJ and SEC issued the Resource Guide in November 2012 (revised in June 2015) as guidance on the application and enforcement of the FCPA.
16. Since Siemens AG, these companies include Alstom S.A. ($772 million) (the largest FCPA criminal fine ever imposed); Teva Pharmaceuticals Industries Ltd. ($519 million); Telia Co. AB (approximately $483 million, as part of global settlement); Keppel Offshore and Marine Ltd. ($422 million); Odebrecht/Brackem ($419.8 million) (plus additional payments of $354.9 million to Swiss authorities and $2.8 billion to Brazilian authorities); Total S.A. ($398.2 million); VimpelCom Ltd. ($397.6 million); Snamprogetti Netherlands B.V. ($365 million); Technip S.A. ($338 million); JGC Corp. ($218 million); Daimler AG ($185 million).
17. *See* 15 U.S.C. § 78ff(c) (2000); 15 U.S.C. § 78dd-2(g) (1977).
18. The jurisdictional nexus is only the "use of an instrumentality of interstate commerce." *See*, *e.g.*, Information, United States v. Colin Steven, Case 1:17-cr-00788-AJN (S.D.N.Y. Dec. 12, 2017), Press Release No. 17-1466, U.S. Dep't of Justice, Former Embraer Sales Executive Pleads Guilty to Foreign Bribery and Related Charges (Dec. 21, 2017), www.justice.gov/opa/pr/former-embraer-sales-executive-pleads-guilty-foreign-bribery-and-related-charges (Steven, a U.K. citizen residing in the United Arab Emirates and an employee of Embraer S.A., a foreign issuer, paid bribes to Saudi officials to secure the sale of aircraft); SEC v. Straub,

No. 11 Civ. 9645 (S.D.N.Y. Sept. 30, 2016) (upholding exercise of personal jurisdiction of foreign national employees of a Hungarian telecommunications company and foreign issuer involving a bribery scheme in Macedonia); *In re* Mikhail Gourevitch, Exchange Act Release No. 77,288 (Mar. 3, 2016) (Canadian/Israeli citizen who was an employee of a foreign issuer, Nordion (Canada), Inc., used instrumentality of interstate commerce in bribery scheme involving Russian officials); Indictment, United States v. Riedo, Case No. 13-CR-03789 (S.D. Cal. Oct. 15, 2013) (Riedo, a Swiss citizen and an officer of Maxwell Technologies, Inc., an issuer, was charged with conspiracy to violate the FCPA, falsify books and records, and circumvent internal accounting controls, violations of the FCPA, falsification of the books and records, and circumvention of internal controls), www.justice.gov/criminal/fraud/fcpa/cases/riedoa.html; United States v. Sapsizian, 1:06-CR-20797-PAS (S.D. Fla. Mar. 20, 2007) (a French citizen employed by Alcatel, a French telecommunications company whose ADRs were listed on the New York Stock Exchange, pled guilty to a conspiracy to violate the FCPA and violating the FCPA) (jurisdiction based on use of any means of instrumentality of interstate commerce in furtherance of an illicit payment); Press Release No. 07-411, U.S. Dep't of Justice, Former Alcatel Executive Pleads Guilty to Participation in Payment of $2.5 Million in Bribes to Senior Costa Rican Officials to Obtain a Mobile Telephone Contract (June 7, 2007), www.justice.gov/archive/opa/pr/2007/June/07_crm_411.html. But the assertion of jurisdiction is not without its limits. *See* Opinion and Order, SEC v. Sharef, No. 11 Civ. 9073 (S.D.N.Y. Feb. 19, 2013) (finding that the actions of a foreign executive at Siemens AG, a German citizen, were too attenuated to establish minimum contacts with the United States).

19. International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, § 4, 112 Stat. 3302, 3306 (1998); 15 U.S.C. § 78dd-3(a). This amendment was enacted in part to conform the FCPA to the OECD Convention (*see supra* note 3).
20. Resource Guide, *supra* note 15, at 11.
21. *Id.* at n.55. In addition, the DOJ has brought enforcement actions against and asserted jurisdiction over foreign companies that only "cause" conduct (by non-agents) to take place within the territory of the United States in furtherance of a bribe. *See* Information, United States v. Daimler Chrysler China Ltd., 1:10-CR-00066-RJI (D.D.C. Mar. 22, 2010) (DOJ alleged only that Daimler Chrysler "caused" funds to be sent from Germany to financial interests in the United States); Information, United States v. SSI Int'l Far East, Ltd., 3:06-CR-00398-KI (D. Or. 2006) (SSI Korea "caused" payments to be made from a bank account in the United States to officials in China); United States v. Panalpina World Transp. (Holding) Ltd., No. 10-769 (S.D. Tex. Nov 4, 2010) (DOJ alleged only that Panalpina used emails between its U.S. and Nigerian affiliates to cause payments to be made to foreign officials). In each of these settled cases, the jurisdictional basis for prosecuting the foreign companies appears tenuous.
22. *See* Deferred Prosecution Agreement, Société Générale S.A. (a French company), and Plea Agreement, SGA Société Générale Acceptance N.V. (its foreign subsidiary), for conspiracy to violate the anti-bribery provision of the FCPA. Jurisdiction was based upon acts occurring within the territory of the United States. Information, United States v. Société Générale S.A., 18-CR-253 (E.D. NY 2018); Information, United States v. SGA Société Générale

Acceptance, N.V., 18-CR-274 (E.D. NY 2018); Press Release. No. 18-722, U.S. Dep't of Justice, Société Générale S.A. Agrees to Pay $860 Million in Criminal Penalties for Bribing Gaddafi-Era Libyan Officials and Manipulating LIBOR Rate (June 4, 2018), www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan; *see* Non-Prosecution Agreement Between U.S. Department of Justice and Parametric Technology (Shanghai) Software Co. & Parametric Technology (Hong Kong) Ltd. (Feb. 16, 2016); Press Release No. 16-179, U.S. Dep't of Justice, PTC Inc. Subsidiaries Agree to Pay More Than $14 Million to Resolve Foreign Bribery Charges (Feb. 16, 2016), www.justice.gov/opa/pr/ptc-inc-subsidiaries-agree-pay-more-14-million-resolve-foreign-bribery-charges (Chinese subsidiaries of PTC Inc. provided nonbusiness related travel and other improper payments to Chinese government officials); United States v. Weatherford Servs., Ltd., Case No. 4:13-cr-00734 (S.D. Tex. Nov. 26, 2015) (foreign subsidiary of Weatherford International Ltd., a Swiss oil service company, paid bribes to Angolan officials); Plea Agreement, United States v. Vetco Gray UK Ltd. & Vetco Gray Controls, Ltd., CR H-07-004 (S.D. Tex. Feb. 6, 2007); Plea Agreement, United States v. Syncor Taiwan, Inc., No. 02-CR-1244-SVW (C.D. Cal. 2002); United States v. ABB Vetco Gray, Inc. & ABB Vetco Gray UM Ltd., No. CR H-04-279 (S.D. Tex. June 22, 2004).

23. Plea Agreement, United States v. DPC (Tianjin) Co. Ltd., No. CR 05-482 (C.D. Cal. May 20, 2005); *see also* United States v. Teva LLC, No. 1:16-cv-20967-KMW (S.D. Fla. Dec. 22, 2016); Press Release No. 16-1522, U.S. Dep't of Justice, Teva Pharmaceutical Industries Ltd. Agrees to Pay More Than $283 Million to Resolve Foreign Corrupt Practices Act Charges (Dec. 22, 2016), www.justice.gov/opa/pr/teva-pharmaceutical-industries-ltd-agrees-pay-more-283-million-resolve-foreign-corrupt; Teva LLC ("Teva Russia"). A Russian wholly owned subsidiary of TEVA Pharmaceutical Industries Ltd. ("Teva Pharmaceutical"), an issuer, was charged with being an "agent" of Teva Pharmaceutical. The DOJ asserted only that Teva Russia was operated for the benefit and under the control of Teva Pharmaceutical and was principally responsible for the sale and marketing of Teva pharmaceutical products in Russia. The information specified that Teva Russia sent emails through the United States. Teva Russia pled guilty to conspiring to violate the FCPA. In a case against Unitel LLC, the criminal information charged Unitel, the Uzbekistan subsidiary of VimpelCom, a foreign issuer, with being an "agent of an issuer." There is no factual support for the agent relationship. Unitel pled guilty to conspiracy to violate the FCPA. *See* United States v. Unitel LLC, Case 1:16-cr-00137-ER (S.D.N.Y. Feb. 18, 2016); Press Release No. 16-194, U.S. Dep't of Justice, VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme (Feb. 18, 2016), www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million; *see also* SEC v. ENI, S.p.A. & Snamprogetti Netherlands B.V., No. 4:10-cv-2414 (S.D. Tex. July 7, 2010) (Snamprogetti Netherlands B.V.—a Dutch company and an indirect wholly owned subsidiary of ENI, S.p.A., an Italian company and an issuer under the FCPA—acted as an "agent" of ENI. The complaint asserted only that ENI exercised control and supervision over Snamprogetti, but provided no support for the assertion that it acted as an agent.).

24. SEC v. ABB Ltd., Accounting and Auditing Enforcement Release No. 2049 (July 6, 2004).
25. 15 U.S.C. §§ 78u-2(e), 78u-3(e). The SEC has utilized disgorgement as an equitable remedy. However, in Kokesh v. SEC, 137 S. Ct. 1635 (2017), the U.S. Supreme Court held that disgorgement orders constitute a penalty, not an equitable remedy. It is therefore subject to the five-year statute of limitations set forth in 28 U.S.C. § 2462.
26. SEC v. Westinghouse Air Brake Tech. Corp., Litigation Release No. 20,457 (Feb. 14, 2008).
27. *In re* Telia Co. AB, Accounting and Auditing Enforcement Release No 3898 (Sept. 17, 2017); Press Release No. 2017-71, U.S. Sec. & Exch. Comm'n, Telecommunications Company Paying $965 Million for FCPA Violations (Sept. 21, 2017), www.sec.gov/news/press-release/2017-171.
28. False entries made by a foreign subsidiary in its books and records are then consolidated and reported by the parent company in its consolidated financial statements. The parent company may also be liable for failing to devise internal controls across the organization to detect and prevent improper payments to foreign officials.
29. SEC v. Chiquita Brands Int'l, Inc., Accounting and Auditing Enforcement Release No. 1464 (Oct. 3, 2001).
30. Chiquita Brands paid a $100,000 civil penalty. *Id*. In this situation, the conduct of the Colombian subsidiary would not be subject to the bribery provisions of the FCPA, unless some act in furtherance of the corrupt payment occurred in the United States. Since Chiquita Brands did not knowingly participate in or authorize the alleged misconduct, it would not be liable under the bribery provisions of the FCPA.
31. *See*, *e.g.*, *In re* Novartis AG, Accounting and Auditing Enforcement Release No. 3759 (Mar. 23, 2016) (Chinese subsidiaries of Swiss company made improper payments to Chinese healthcare officials without knowledge of parent company; Novartis charged with violation of the books and records, and internal accounting control provisions of the FCPA); *In re* The Goodyear Tire & Rubber Co., Accounting and Auditing Enforcement Release No. 3640 (Feb. 24, 2015) (Goodyear had no knowledge of bribery payments made by its subsidiaries); *In re* Alcoa, Inc., Accounting and Auditing Enforcement Release No. 3525 (Jan. 9, 2014) (Alcoa had no knowledge of bribery payments made by its subsidiaries); *In re* Koninklijke Philips Elecs. N.V., Accounting and Auditing Enforcement Release No. 3452 (Apr. 5, 2013) (Polish subsidiary of Netherlands company made improper payments to healthcare officials without knowledge of parent company); SEC v. Smith & Nephew PLC, 1:12-CV-00187 (D.D.C. Feb. 6, 2012) (British company charged with FCPA violations for actions taken by its U.S. and German subsidiaries); SEC v. Oracle Corp., Civil Action No. CV-12-4310 CRB (N.D. Cal. Aug. 16, 2012), Litigation Release No. 22450 (Aug. 16, 2012) (violations of books and records and internal control provisions of FCPA due to Indian subsidiary secretly setting aside excess funds paid to distributors, without the knowledge or authorization of Oracle); *In re* Rockwell Automation, Inc., Accounting and Auditing Enforcement Release No. 3274 (May 3, 2011) (Rockwell had no knowledge of improper payments made by one of its Chinese subsidiaries); SEC v. Int'l Bus. Machs. Corp., Accounting and Auditing Enforcement Release No. 3254 (Mar. 8, 2011) (Korean and Chinese subsidiaries made improper payments without the knowledge of the parent company); *In re* Helmerich & Payne, Accounting and Auditing Enforcement Release No. 3026 (July 30, 2009) (involved

payments by second-tier subsidiaries to Customs officials); SEC v. Fiat S.p.A. & CNH Glob. N.V., Litigation Release No. 20,835 (Dec. 22, 2008) (alleging that U.S. issuer's subsidiaries, without issuer's knowledge, made illegal kickback payments in connection with sales to Iraq under the OFFP); SEC v. ITT Corp., Accounting and Auditing Enforcement Release No. 2934 (Feb. 11, 2009) (alleging that ITT did not maintain accurate books and records or a proper system of internal controls because its foreign subsidiary's illicit payments were improperly classified as commission expenses and consolidated into ITT's financial statements); *In re* Elec. Data Sys. Corp., Accounting and Auditing Enforcement Release No. 2727 (Sept. 25, 2007) (EDS maintained inaccurate books and records due to false invoicing scheme undertaken without EDS's knowledge by employee of subsidiary who made improper payments to officials of Indian government-owned companies). In SEC v. Dow Chem. Co., Litigation Release No. 20,000, 2007 WL 460874 (Feb. 13, 2007), the SEC settled an enforcement action against Dow for violating the books-and-records and internal control provisions. Dow's majority-owned Indian subsidiary had made payments to Indian officials to expedite the registration of its products. Dow had no knowledge of and did not authorize the improper conduct. *See also In re* Monsanto Co., Accounting and Auditing Enforcement Release No. 2159 (Jan. 6, 2005) (Monsanto did not have knowledge of and did not authorize most of the improper conduct engaged in by its foreign subsidiaries); *In re* ABB Ltd., Accounting and Auditing Enforcement Release No. 18,775 (July 6, 2004) (SEC settled an enforcement action against ABB Ltd. for violating the anti-bribery, books-and-records, and internal accounting controls of its subsidiaries when ABB had no knowledge of and did not authorize the improper conduct); *In re* Schering-Plough Corp., Accounting and Auditing Enforcement Release No. 2032 (June 9, 2004); SEC v. Schering-Plough Corp., Case No. 1:04-CV-00945 (D.D.C. June 9, 2004) (settlement of violation of sections 13(b)(2)(A) and 13(b)(2)(B) and payment of $500,000 penalty arising from improper payments made by the Polish office of Schering-Plough's Swiss subsidiary to a charitable foundation headed by the director of a Polish government health fund; the payment was made to induce the director to influence purchases of pharmaceutical products by the health fund without Schering-Plough's knowledge or authorization of the improper conduct); *In re* BellSouth Corp., Accounting and Auditing Enforcement Release No. 1494 (Jan. 15, 2002) (BellSouth had no knowledge of and did not participate in or authorize the alleged improper conduct).

32. *See In re* Statoil, Exchange Act Release No. 54,599 (Oct. 3, 2006) (finding that Statoil's management had performed "no due diligence concerning the named or the unnamed parties to the contract"); *In re* Schnitzer Steel Indus., Inc., Accounting and Auditing Enforcement Release No. 2493 (Oct. 16, 2006) (lack of internal controls includes lack of training and education regarding the requirements of any of its employees, agents or subsidiaries regarding the requirements of the FCPA).
33. *See* Non-Prosecution Agreement Between the SEC and Akamai Techs., Inc. (June 7, 2016) (company lacked adequate internal accounting controls such as formalized due diligence of China-based channel partners, exercising audit rights to monitor compliance with anti-bribery policies, translating anti-corruption policy into Mandarin, inadequate employee training on compliance, and lack of effective procedures to review and approve business entertainment). In a case involving the concealment of more than $8 million in gifts, cash

and nonbusiness meals, travel and entertainment it gave to Chinese government officials, Avon subsidiaries pled guilty to criminal charges of conspiracy to violate the accounting provisions of the FCPA. Press Release No. 14-1419, U.S. Dep't of Justice, Avon China Pleads Guilty to Violating the FCPA by Concealing More Than $8 Million in Gifts to Chinese Officials (Dec. 17, 2014), www.justice.gov/opa/pr/avon-china-pleads-guilty-violating-fcpa-concealing-more-8-million-gifts-chinese-officials. Avon Products, Inc., the parent, entered into a deferred prosecution agreement and admitted to conspiracy to violate the books-and-records provisions, and the internal controls provisions of the FCPA. Deferred Prosecution Agreement, United States v. Avon Prods., Inc. (Dec. 15, 2014), www.justice.gov/file/188591/download. The statement of facts made clear that Avon had an inadequate compliance program, as part of its inadequate internal controls. It did not have an anticorruption policy, lacked stand-alone FCPA training, did not conduct corruption-related due diligence on third parties, had no controls on the approval process of third parties, did not require adequate documentation supporting the retention of third parties, did not conduct a periodic risk assessment of its compliance program, and lacked oversight of its gift, travel, and entertainment expenditures. *See also* Non-Prosecution Agreement Between the DOJ and Bio-Rad Laboratories, Inc. (Nov. 3, 2014), www.justice.gov/sites/default/files/criminal-fraud/legacy/2014/11/03/Bio-Rad-NPA-110314.pdf (citing in its statement of facts numerous compliance program weaknesses in finding a criminal violation of the internal controls provisions of the FCPA).

34. *See In re* Cadbury Ltd. & Mondelez Int'l, Inc., Administrative Proceeding File No. 3-17759 (Jan. 6, 2017) (internal control violation when company failed to conduct appropriate due diligence on and properly monitor activities of its agent); *In re* LAN Airlines, S.A., Administrative Proceeding File No. 3-17357 (July 25, 2016) (internal controls did not require due diligence on third parties); *In re* United Indus. Corp., Accounting and Auditing Enforcement Release No. 2981 (May 29, 2009) (internal control violations where president approved payments to agent without written contract and no written record of any due diligence, and contract, when signed, lacked adequate representations and audit rights); SEC v. Halliburton Co. & KBR, Inc., Accounting and Auditing Enforcement Release No. 2935A (Feb. 11, 2009). The KBR and Halliburton attorneys conducting due diligence of a U.K. agent failed to seek information on the beneficial owners of the shell company of the agent, how the agent would carry out duties from the United Kingdom for a Nigerian contract, what duties had been undertaken by the agent on an existing $60 million contract, and references provided by the agent, some of which were false. SEC v. Halliburton Co., Civil Action No. 4:09-CV-399 (S.D. Tex. Feb. 11, 2009). Also, no senior Halliburton or KBR official responsible for signing the agent contract "undertook any independent review or asked any questions concerning the UK agent." *Id*.; *see also* SEC v. Siemens AG, Accounting and Auditing Enforcement Release No. 2911 (Dec. 15, 2008); SEC v. Siemens AG, Civil Action No. 1:08-CV-02167 (D.D.C. Dec. 15, 2008) (alleging that Siemens' due diligence on foreign consultants was inadequate in implementing sufficient internal controls); SEC v. El Paso Corp., Litigation Release No. 19,991, 2007 WL 414353 (Feb. 7, 2007) (alleging that El Paso had failed to "maintain an adequate system of internal controls to detect and prevent the payments [and] although El Paso inserted a provision in some contracts requiring

the third party to represent that it had not paid surcharges, El Paso failed to conduct due diligence to ensure that surcharges were not paid"); *In re* Statoil, Exchange Act Release No. 54,599 (Oct. 13, 2006) (finding that Statoil's management had performed "no due diligence concerning the named or the unnamed parties to the Contract" and that the lack of "adequate controls sufficient to provide reasonable assurances that the Contract complied with applicable laws . . . enabled executives responsible for the Contract to conceal the illegal payments to Iranian officials").

35. *See In re* Gen. Cable Corp., Administrative Proceeding File No. 3-17755 (Dec. 29, 2016) (company failed to adequately train employees of its subsidiaries on anti-corruption risks, require third parties involved in sales to foreign state-owned enterprises to comply with the FCPA, and perform anti-corruption due diligence on third parties); *In re* BHP Billiton Ltd. & BHP Billiton Plc, Exchange Act Release No. 74998 (May 20, 2015) (finding the company's internal controls were insufficient regarding its use of a hospitality application form to invite individuals, including government officials, to the 2008 Beijing Summer Olympic Games); *In re* Bruker Corp., Accounting and Auditing Enforcement Release No. 3611 (Dec. 15, 2014) (inadequate internal controls included the failure to translate its FCPA training materials, FCPA policy, and its code of conduct into local languages, including Mandarin); Deferred Prosecution Agreement Between the DOJ and Weatherford Int'l Ltd., Case No. 4:13-cr-00733 (S.D. Tex. Nov. 26, 2013) (Weatherford failed to institute effective internal controls, including corruption-related due diligence on third parties, acquisitions, and joint ventures, procedures for gifts, travel and entertainment, a dedicated compliance officer or compliance personnel, anticorruption training, and a process for reporting and investigating ethics complaints); *see* SEC v. Agco, Civil Action No. 1:09-CV-01865 (D.D.C. Sept. 30, 2009) (Agco failed to conduct due diligence on the foreign agent it hired to facilitate sales of agricultural equipment to the Iraqi government, to require that the agent undergo FCPA training, to accurately explain the agent's services and payments in the agent's contract, and to include FCPA language in that contract and thereby failed to maintain an effective system of internal controls to prevent or detect FCPA violations); SEC v. Siemens AG, Civil Action No. 1:08-CV-02167 (D.D.C. Dec. 15, 2008) (lack of internal controls includes failure "to conduct appropriate anti-bribery and corruption training"); *In re* Westinghouse Air Brake Techs. Corp., Exchange Act Release No. 57,333, Accounting and Auditing Release No. 2785 (Feb. 14, 2008) (finding that Wabtec lacked internal controls because it did not provide training regarding FCPA requirements or monitor compliance with the FCPA); *In re* Schnitzer Steel Indus., Inc., Accounting and Auditing Enforcement Release No. 2493, 2006 WL 2933839 (Oct. 16, 2006) (lack of internal controls includes lack of training and education for any of its employees, agents or subsidiaries regarding the requirements of the FCPA, and lack of procedures to monitor its employees, agents and subsidiaries for compliance with the FCPA).
36. Resource Guide, *supra* note 15, at 40.
37. *Id*. at 57–62.
38. *Id*. at 57.
39. *See*, *e.g.*, United States v. Metcalf & Eddy, Inc., No. 99 Civ. 12566 (D. Mass. Dec. 14, 1999); United States v. Titan Corp., 05-cr-00411 (S.D. Cal. 2005); Plea Agreement at app. D,

United States v. BAE Sys. plc, Case No. 1:10-cr-00035 (D.D.C. 2010); Plea Agreement at Exhibit 2, United States v. Marubeni Corp., Case No. 3:14-cr-00052-JBA (D. Conn. Mar. 9, 2014).

40. *See* U.S. Attorneys' Manual § 9.28.300 (Principles of Federal Prosecution of Business Organizations: Factors to Be Considered).
41. U.S. Sentencing Guidelines Manual § 8B2.1, Amendments to the Sentencing Guidelines (effective Nov. 1, 2010).
42. *Id.* § 8C2.5(f).
43. U.S. Dep't of Justice, Evaluation of Corporate Compliance Programs (Feb. 8, 2017), www.justice.gov/criminal-fraud/page/file/937501/download.
44. The OECD also published guidance on compliance, which it adopted on February 18, 2010. OECD, Good Practice Guidance on Internal Controls, Ethics and Compliance (Feb. 18, 2010), www.oecd.org/daf/anti-bribery/44884389.pdf.
45. For the period May 1994 through April 2000, the U.S. government received information that 353 contracts valued at $165 billion may have been affected by bribery by foreign firms. U.S. companies are alleged to have lost ninety-two of these contracts, at an estimated value of $26 billion. Addressing the Challenges of International Bribery and Fair Competition: July 2000 (Second Annual Report to Congress on the OECD Antibribery Convention) at v (Executive Summary) (July 2000), http://tcc.export.gov/wcm/groups/marketresearch/@tcc/documents/briberyreport/exp_005908.pdf. An unclassified summary of a classified report on foreign competitive practices released by the Department of Commerce identified approximately 100 cases of foreign firms using bribery to win international contracts. 12 Int'l Trade Rep. (BNA) 1711 (Oct. 18, 1995). Congressional hearings on possible revisions to the FCPA elicited testimony regarding instances of business lost by U.S. companies as a result of the FCPA.
46. Omnibus Trade and Competitiveness Act of 1998, Pub. L. No. 100-418, § 5003(d)(l), 102 Stat. 1107, 1107-1574 (codified as amended at 15 U.S.C. § 78dd-1 (1994)).
47. *See* Elizabeth K. Spahn, *Multijurisdictional Bribery Law Enforcement: The OECD Anti-Bribery Convention*, 53 Va. J. of Int'l L. (2012).
48. The forty-four signatories to the OECD Convention include all thirty-six members of the OECD, as well as eight non-OECD countries (Argentina, Brazil, Bulgaria, Colombia, Costa Rica, Peru, Russia, and South Africa).
49. *See* OECD, Update on Tax Legislation on the Tax Treatment of Bribes to Foreign Public Official in Countries Parties to the OECD Anti-Bribery Convention (June 2011), www.oecd.org/tax/crime/41353070.pdf.
50. Pressure from the OECD Working Group was a major reason for the enactment by the United Kingdom of the U.K. Bribery Act. This law, which became effective in July 2011, has led to a number of significant enforcement actions. OECD, Fighting the Crime of Foreign Bribery: The Anti-Bribery Convention and the OECD Working Group on Bribery (2017), www.oecd.org/corruption/Fighting-the-crime-of-foreign-bribery.pdf.
51. DOJ and SEC press releases announcing enforcement settlements frequently refer to and thank the support and assistance received from enforcement authorities in other countries. *See*, *e.g.*, Press Release No. 17-1348, U.S. Dep't of Justice, SBM Offshore N.V. and United

States-Based Subsidiary Resolve Foreign Corrupt Practices Act Case Involving Bribes in Five Countries (Nov. 29, 2017), www.justice.gov/opa/pr/sbm-offshore-nv-and-united-states-based-subsidiary-resolve-foreign-corrupt-practices-act-case; Press Release No. 16-194, U.S. Dep't of Justice, VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme (Feb. 18, 2016) [hereinafter VimpelCom Press Release], www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million. The DOJ has also assisted other enforcement authorities in their investigations. *See*, *e.g.*, Press Release No. 16-1240, U.S. Dep't of Justice, Embraer Agrees to Pay More than $107 Million to Resolve Foreign Corrupt Practices Act Charges (Oct. 24, 2016), www.justice.gov/opa/pr/embraer-agrees-pay-more-107-million-resolve-foreign-corrupt-practices-act-charges.

52. *See* VimpelCom Press Release, *supra* note 51.
53. *See* Press Release No. 17-074, U.S. Dep't of Justice, Rolls-Royce plc Agrees to Pay $170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case (Jan. 17, 2017), www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act.
54. *Id.* The DOJ credited the $25 million penalty paid to Brazil against the total fine to the DOJ.
55. *See* Press Release No. 16-1515, U.S. Dep't of Justice, Odebrecht and Braskem Plead Guilty and Agree to Pay at Least $3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History (Dec. 21, 2016), www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve.
56. *See* Press Release No. 17-1035, U.S. Dep't of Justice, Telia Company AB and Its Uzbek Subsidiary Enter into a Global Foreign Bribery Resolution of More Than $965 Million for Corrupt Payments in Uzbekistan (Sept. 21, 2017), www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965.
57. *Id.*; *see also* Press Release No. 17-1476, U.S. Dep't of Justice, Keppel Offshore & Marine Ltd. and U.S. Based Subsidiary Agree to Pay $422 Million in Global Penalties to Resolve Foreign Bribery Case (Dec. 22, 2017) (Keppel Offshore Marine Ltd., a Singapore company, and its U.S. subsidiary entered into a global settlement in the amount of $422 million with the United States, Singapore, and Brazil arising out of bribes paid to Brazilian officials), www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties.
58. OECD, Fighting the Crime of Foreign Bribery: The Anti-Bribery Convention and the OECD Working Group on Bribery (2017), www.oecd.org/corruption/Fighting-the-crime-of-foreign-bribery.pdf; OECD Working Grp. on Bribery, 2016 Data on Enforcement of the Anti-Bribery Convention (Nov. 2017), www.oecd.org/daf/anti-bribery/Anti-Bribery-Convention-Enforcement-Data-2016.pdf.

59. This author had the opportunity to live and work in Kenya for one year during 2015. In Kenya, as in many other countries throughout the world, corruption is a part of one's daily life. For a brief perspective on this problem, *see* Don Zarin, *To Break the Cycle of Graft Costs Must Outweigh Gains*, NATION [Kenya] (Aug. 22, 2015), www.nation.co.ke/oped/opinion/Corruption-Kenya-Government-Graft-Law/440808-2842706-xhpov6/index.html.