

2012

Anti-Corruption

Leslie A. Benton

Melissa T. Bruijneel

Mikhail Reider-Gordon

Anne Takher

Recommended Citation

Leslie A. Benton et al., *Anti-Corruption*, 46 INT'L L. 353 (2012)
<https://scholar.smu.edu/til/vol46/iss1/26>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Anti-Corruption*

LESLIE A. BENTON, MELISSA T. BRUIJNEEL, MIKHAIL REIDER-GORDON, &
ANNE TAKHER*

I. U.S. Developments

A. FCPA ENFORCEMENT

In 2011, the United States continued to enforce aggressively its foreign bribery statute, the Foreign Corrupt Practices Act (FCPA).¹ There were a record number of FCPA trials and significant judicial interpretations of the statute. The Securities and Exchange Commission (SEC) entered into its first FCPA-related deferred prosecution agreement and issued final rules implementing the Dodd-Frank whistleblower provisions.²

B. LEGISLATIVE DEVELOPMENTS AND GOVERNMENT GUIDANCE

1. *Dodd-Frank Whistleblower Provisions*

Final rules came into effect on August 12, 2011. The new regulations include: procedures to report possible federal securities violations and to submit claims for whistleblower awards; criteria for determining award eligibility and amounts; incentives for whistleblowers to use internal corporate compliance systems before reporting to the SEC; and anti-retaliation protection.³ The Office of the Whistleblower submitted its first annual report to Congress in November.⁴

* This report of developments during 2011 was prepared by the ABA International Law Section's Anti-Corruption Committee. Leslie A. Benton is Senior Vice President at Levick Strategic Communications, LLC; Melissa T. Bruijneel is an attorney practicing in New York; Mikhail Reider-Gordon is Director, Disputes & Investigations, at Navigant Consulting, Inc.; and Anne Takher is Senior Compliance Attorney at Intel Corp. For developments in 2010, see Leslie Benton et al., *Anti-Corruption*, 45 INT'L LAW. 345 (2011). For developments in 2009, see Jeffrey Clark et al., *Anti-Corruption*, 44 INT'L LAW. 451 (2010).

1. 15 U.S.C.A. §§ 78dd-1.

2. Press Release, United States Securities & Exchange Commission [SEC], SEC Adopts Rules to Establish Whistleblower Program (May 25, 2011), <http://www.sec.gov/news/press/2011/2011-116.htm>.

3. Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, 76 Fed. Reg. 34,300 (June 13, 2011); Press Release, SEC, SEC's New Whistleblower Program Takes Effect Today (Aug. 12, 2011), <http://www.sec.gov/news/press/2011/2011-167.htm>.

4. SEC, OFFICE OF THE WHISTLEBLOWER, ANNUAL REPORT ON THE DODD-FRANK WHISTLEBLOWER PROGRAM (2011), available at <http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf>.

2. *Proposals to Reform the FCPA*

In June, Congress heard testimony from the DOJ, the business community, and the defense bar regarding the impact of aggressive FCPA enforcement.⁵ Witnesses provided conflicting testimony on whether Congress should better define the FCPA's terms and whether it should provide affirmative defenses to defendants. Six amendments to the FCPA were proposed:

- a. Adding a compliance defense;
- b. Clarifying the meaning of "foreign official;"
- c. Improving DOJ guidance;
- d. Limiting criminal successor liability;
- e. Adding a "willfulness" requirement for corporate criminal liability; and
- f. Limiting parent liability for conduct of a subsidiary.⁶

3. *Opinion Procedure Release 11-01*⁷

On June 30, the DOJ released its only FCPA Opinion Procedure Release for 2011. A U.S. adoption service provider who hosted two visiting foreign government officials is the subject of Release 11-01.

4. *Contractor Debarment Bill*⁸

In December, a bill was introduced proposing that contractors convicted of FCPA violations be debarred from federal contracts or grants.

C. TRIALS AND JUDICIAL INTERPRETATIONS

1. *Lindsey Manufacturing Company, Keith Lindsey, and Steve Lee*⁹

In April, the U.S. District Court for the Central District of California heard the first FCPA case where a company was a named defendant.¹⁰ In *U.S. v. Aguilar*, Lindsey Manufacturing Company, CEO Keith Lindsey, and CFO Steve Lee were charged with violating the FCPA by bribing Mexican officials at a state-owned utility company. Mexican intermediary Angela Aguilar was charged with money laundering conspiracy. Defendants chal-

5. *Foreign Corrupt Practices Act: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 112th Cong. (2011), http://judiciary.house.gov/hearings/printers/112th/112-47_66886.pdf.

6. *Id.* at 23-36.

7. Opinion Procedure Release 11-01, U.S. Dep't of Justice, Foreign Corrupt Practices Act Review (June 30, 2011), <http://www.justice.gov/criminal/fraud/fcpa/opinion/2011/11-01.pdf>.

8. Overseas Contractor Reform Act, H.R. 3588, 112th Cong. (2011).

9. *United States v. Noriega*, No. 2:10-cr-01031-AHM (C.D. Cal. 2011); *Lindsey Case: Judge Issues Written Ruling on "Foreign Official," THE FCPA BLOG* (Apr. 21, 2011, 2:20 PM), <http://www.fcpablog.com/blog/2011/4/21/lindsey-case-judge-issues-written-ruling-on-foreign-official.html>; Press Release, U.S. Dep't of Justice Office of Pub. Affairs, California Company, Its Two Executives and Intermediary Convicted by Federal Jury in Los Angeles on All Counts for Their Involvement in Scheme to Bribe Officials at State-Owned Electrical Utility in Mexico (May 10, 2011), <http://www.justice.gov/opa/pr/2011/May/11-crm-596.html>.

10. *United States v. Aguilar*, 783 F. Supp. 2d 1108 (C.D. Cal. 2011).

lenged the DOJ's interpretation of "foreign official," which includes employees of foreign state-owned enterprises (SOEs). On April 20, the court ruled that the statutory term "instrumentalities" applies to foreign SOEs and enumerated five non-exclusive factors to guide the analysis.¹¹ On May 10, following a five-week trial and after only one day of deliberations, the jury found all defendants guilty on all counts. One day before the verdict, the defendants moved to dismiss for prosecutorial misconduct. On December 1, the judge vacated the convictions and dismissed the indictment against Lindsey Manufacturing, Keith Lindsey, and Steve Lee, with prejudice.

2. *Stuart and Hong "Rose" Carson, Paul Cosgrove, and David Edmonds (CCI)*¹²

Control Components, Inc. CEO Stuart Carson, his wife Rose "Hong" Carson, Paul Cosgrove, and David Edmonds were charged for arranging illegal payments to officials at SOEs in China, Korea, Malaysia, and the United Arab Emirates. Defendants challenged their indictments and the DOJ's interpretation of "foreign official" in motions to dismiss. On May 18, 2011, the court held that SOEs could be "instrumentalities" under the FCPA. Whether an SOE was an instrumentality, however, was a question of fact for the jury using non-exclusive factors similar to those enumerated in *Lindsey*.

3. *John Joseph O'Shea (ABB)*¹³

John Joseph O'Shea, general manager of ABB, Inc., was charged with conspiracy to bribe Mexican officials to secure contracts from a state-owned utility. O'Shea also challenged the government's interpretation of "foreign official" in a motion to dismiss. The motion was fully briefed in April.

4. *Haiti Teleco*¹⁴

In July, Joel Esquenazi, former President of Terra Telecommunications, and Carlos Rodriguez, its former Executive Vice President, were tried in federal district court in Florida for paying bribes to Haitian telecommunications officials. In August, the jury convicted defendants on all counts involving FCPA violations, money laundering, and wire fraud. On October 25, Esquenazi was sentenced to fifteen years imprisonment, the longest-ever sentence imposed in FCPA litigations, and Rodriguez was sentenced to seven years. Both defendants appealed their sentences to the Eleventh Circuit.

11. *Id.* at 1115.

12. United States v. Carson, No. SACR 09-00077-JVS, 2011 WL 5101701 (C.D. Cal. May 19, 2011); "Foreign Official" Challenge Fails Again, THE FCPA BLOG, (May 19, 2011, 7:42 AM), <http://www.fcpablog.com/blog/2011/5/19/foreign-official-challenge-fails-again.html>.

13. United States v. O'Shea, No. H-09-629 (S.D. Tex. 2009); O'Shea "Foreign Official" Challenge Fully Briefed, FCPA PROFESSOR (Apr. 21, 2011), <http://www.fcpaprofessor.com/oshea-foreign-official-challenge-fully-briefed>.

14. United States v. Esquenazi, No. 1:09-21010-CR-Martinez-1 (S.D. Fla. 2011); Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Two Telecommunications Executives Convicted by Miami Jury on All Counts for Their Involvement in Scheme to Bribe Officials at State-Owned Telecomms. Co. in Haiti (Aug. 5, 2011), <http://www.justice.gov/opa/pr/2011/August/11-crm-1020.html>; Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Executive Sentenced to 15 Years in Prison for Scheme to Bribe Officials at State-Owned Telecommunications Company in Haiti (Oct. 25, 2011), <http://www.justice.gov/opa/pr/2011/October/11-crm-1407.html>.

5. *Africa Sting/Shot-Show*

Two trials this year involved defendants in the Africa Sting/Shot-Show litigation. This litigation is the largest FCPA action taken by the DOJ against individuals, and involves the broadest use of undercover law enforcement techniques to uncover FCPA violations. Defendants are charged with engaging in corrupt deals to sell \$15 million in supplies to the defense minister of Gabon.

On July 7, 2011, after the trial of the Group 1 defendants, Pankesh Patel, John Benson Weir, Andrew Bigelow, and Lee Allen Tolleson, the court declared a mistrial when the jury could not reach a unanimous verdict.¹⁵ The DOJ planned to retry the defendants. During the trial, the Group 1 Defendants moved for a judgment of acquittal alleging lack of jurisdiction. Judge Leon granted the motion as to defendant Patel on one count, holding that the FCPA requires that the corrupt act be taken while in U.S. territory.

On September 22, 2011, jury selection began in the trial of the Group 2 defendants: John Mushriqui, Jeana Mushriqui, R. Patrick Caldwell, Stephen Giordanella, John Godsey, and Marc Morales.¹⁶ The trial court again dismissed some of the charges on December 22, 2011.¹⁷

D. CORPORATE PROSECUTIONS AND SETTLEMENTS

1. *Maxwell Technologies, Inc.*¹⁸

On January 31, Maxwell agreed to pay over \$14 million in penalties for FCPA violations related to over \$2.5 million in bribes made to Chinese SOE officials. Maxwell entered into a three-year deferred prosecution agreement (DPA) with the DOJ and settled a SEC civil action.

2. *Tyson Foods, Inc.*¹⁹

On February 10, Tyson agreed to pay over \$5 million in penalties for FCPA violations related to payments to Mexican state veterinarians inspecting its chicken processing

15. *United States v. Goncalves*, No. 1:09-cr-003350RJL (D.D.C. 2009); Jeremy Pelofsky, *Mistrial in U.S. Bribery Sting After Jury Deadlock*, REUTERS, Jul. 7, 2011, <http://www.reuters.com/article/2011/07/07/us-bribery-verdict-idUSTRE7667R320110707>; Daniel Matzkin, *District Judge Issues Unprecedented Limitation on FCPA's Jurisdictional Reach*, ANTICORRUPTION BLOG (June 15, 2011), <http://www.anticorruptionblog.com/foreign-corrupt-practices-act/district-judge-issues-unprecedented-limitation-on-fcpas-jurisdictional-reach/>.

16. *United States v. Goncalves*, No. 1:09-cr-00335-RJL (D.D.C. 2010).

17. *Africa Sting Development—Mr. Giordanella, You Are Excused . . . You Are Free To Go*, FCPA PROFESSOR (Dec. 22, 2011), <http://www.fcraprofessor.com/africa-sting-development-mr-giordanella-you-are-excused-you-are-free-to-go>.

18. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Maxwell Technologies Inc. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$8 Million Criminal Penalty (Jan. 31, 2011), <http://www.justice.gov/opa/pr/2011/January/11-crm-129.html>; Maxwell Technologies Inc., Litig. Release No. 21832, 2011 WL 300237 (Jan. 31, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr21832.htm>.

19. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Tyson Foods Inc. Agrees to Pay \$4 Million Criminal Penalty to Resolve Foreign Bribery Allegations (Feb. 10, 2011), <http://www.justice.gov/opa/pr/2011/February/11-crm-171.html>; Tyson Foods, Litig. Release No. 21851, 2011 WL 484774 (Feb. 10, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr21851.htm>.

plants. Tyson entered into a two-year DPA with the DOJ and settled a civil action with the SEC.

3. *IBM*²⁰

On March 18, IBM reached a \$10 million settlement with the SEC over FCPA violations resulting from improper cash payments, gifts, travel, and entertainment to South Korean and Chinese officials.

4. *Ball Corp.*²¹

On March 24, Ball reached a \$300,000 settlement with the SEC related to improper payments to Argentine customs officials in exchange for allowing it to import prohibited used machinery and to export raw materials at reduced tariffs.

5. *JGC Corp.*²²

On April 6, Japan's JGC Corp. settled FCPA charges with the DOJ related to its role in the TSKJ consortium's bribery of Nigerian officials. JGC entered into a two-year DPA, agreeing to pay a \$218.8 million criminal fine and to retain an independent compliance consultant for two years.

6. *Comverse Technology, Inc.*²³

On April 7, Comverse agreed to pay \$2.8 million in penalties for making improper payments to Greek officials. Comverse entered into a two-year non-prosecution agreement (NPA) with the DOJ and settled a civil action with the SEC.

7. *Johnson & Johnson*²⁴

On April 8, Johnson & Johnson (J&J) settled FCPA charges with the DOJ and the SEC for a combined \$70 million in penalties. The charges related to improper payments to medical professionals in Greece, Poland, and Romania, and to kickbacks to the former Iraqi government during the UN Oil-for-Food Program. J&J entered into a DPA with the DOJ that included enhanced remedial measures.

20. International Business Machines Corp., Litig. Release No. 21889, 2011 WL 2433082 (Mar. 18, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr21889.htm>.

21. Ball Corp., Exchange Act Release No. 64123, 2011 WL 1099562 (Mar. 24, 2011), available at <http://www.sec.gov/litigation/admin/2011/34-64123.pdf>.

22. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, JGC Corporation Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay a \$218.8 Million Criminal Penalty (Apr. 6, 2011), <http://www.justice.gov/opa/pr/2011/April/11-crm-431.html>.

23. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Comverse Technology Inc. Agrees to Pay \$1.2 Million Penalty to Resolve Violations of the Foreign Corrupt Practices Act (Apr. 7, 2011), <http://www.justice.gov/opa/pr/2011/April/11-crm-438.html>.

24. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Johnson & Johnson Agrees to Pay \$21.4 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act and Oil for Food Investigations (Apr. 8, 2011), <http://www.justice.gov/opa/pr/2011/April/11-crm-446.html>.

8. *Rockwell Automation*²⁵

On May 3, Rockwell resolved an FCPA action with the SEC related to payments made to Chinese Design Institute employees, agreeing to \$2.3 million in disgorgement and interest and a \$400,000 fine.

9. *Lindsey Manufacturing*

As discussed above, on May 10, Lindsey Manufacturing was convicted of violating the FCPA following a jury trial. On December 1, the case was dismissed due to prosecutorial misconduct.

10. *Tenaris S.A.*²⁶

On May 17, Tenaris resolved FCPA charges with the DOJ and the SEC for a combined \$8.9 million in penalties in connection with improper payments made to officials at Uzbekistan's state-controlled oil-and-gas producer in order to gain access to competitors' confidential bids. Tenaris entered into a NPA with the DOJ and a two-year DPA with the SEC, the Commission's first such agreement in a FCPA case.

11. *Armor Holdings, Inc.*²⁷

On July 13, Armor Holdings settled FCPA charges for nearly \$16 million in total penalties, entering into a NPA with the DOJ and resolving a SEC civil action. The charges related to improper payments to a UN official and to improperly recorded third-party commissions.

12. *Cinergy Telecommunications, Inc.*²⁸

On July 13, Cinergy was indicted for FCPA violations, wire fraud, and money laundering for allegedly bribing Haitian officials.

25. Rockwell Automation, Inc., Exchange Act Release No. 64380, 2011 WL 1662368 (May 3, 2011), available at <http://www.sec.gov/litigation/admin/2011/34-64380.pdf>.

26. Press Release, SEC, Tenaris to Pay \$5.4 Million in SEC's First-Ever Deferred Prosecution Agreement (May 17, 2011), <http://www.sec.gov/news/press/2011/2011-112.htm>; Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Tenaris S.A. Agrees to Pay \$3.5 Million Criminal Penalty to Resolve Violations of the Foreign Corrupt Practices Act (May 1, 2011), <http://www.justice.gov/opa/pr/2011/May/11-crm-629.html>.

27. Press Release, Dep't of Justice Office of Pub. Affairs, Armor Holdings Agrees to Pay \$10.2 Million Criminal Penalty to Resolve Violations of the Foreign Corrupt Practices Act (July 13, 2011), <http://www.justice.gov/opa/pr/2011/July/11-crm-911.html>; Armor Holdings, Inc., Litig. Release No. 22037, 2011 WL 2723783 (July 13, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr22037.htm>.

28. Press Release, Dep't of Justice Office of Pub. Affairs, Florida Telecommunications Co., Two Executives, an Intermediary and Two Former Haitian Government Officials Indicted for Their Alleged Participation in Foreign Bribery Scheme (July 13, 2011), <http://www.justice.gov/opa/pr/2011/July/11-crm-910.html>.

13. *Diageo PLC*²⁹

On July 27, Diageo agreed to pay over \$16 million to the SEC to settle an enforcement action for FCPA violations in India, Thailand, and South Korea.

14. *Bridgestone Corp.*³⁰

On October 5, Bridgestone pled guilty, agreeing to pay \$28 million in criminal penalties for conspiring to rig bids and bribe Latin American officials.

15. *Watts Water Technologies, Inc.*³¹

On October 13, Watts settled FCPA books and records and internal controls charges in connection with payments to state-owned design institutes in China. Watts agreed to pay \$3,576,606 in disgorgement and interest and a \$200,000 civil penalty.

16. *Aon Corp.*³²

On December 20, Aon resolved FCPA charges regarding the misuse of education/training funds in Costa Rica, entering into a NPA and agreeing to pay over \$16 million in civil and criminal penalties.

17. *Magyar Telekom Plc and Deutsche Telekom AG*³³

On December 29, Magyar and its parent company resolved FCPA charges related to Magyar's activities in Macedonia and Montenegro, entering into a DPA and NPA, respectively. The companies agreed to pay over \$95 million in combined civil and criminal penalties.

E. OTHER INDIVIDUAL PROSECUTIONS

1. *Leo Winston Smith*³⁴

On January 11, an amended judgment was issued against Leo Winston Smith, former Director of Pacific Consolidated Industries, sentencing him to six months imprisonment

29. Diageo, Exchange Act Release No. 64978, 2011 WL 3581266 (July 27, 2011) available at <http://www.sec.gov/litigation/admin/2011/34-64978.pdf>.

30. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Bridgestone Corp. Agrees to Plead Guilty to Participating in Conspiracies to Rig Bids and Bribe Foreign Government Officials (Sept. 15, 2011), http://www.justice.gov/atr/public/press_releases/2011/275025.htm.

31. Watts Water Tech., Inc., Exchange Act Release No. 65555, 2011 WL 4860051 (Oct. 13, 2011), available at <http://www.sec.gov/litigation/admin/2011/34-65555.pdf>.

32. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Aon Corporation Agrees to Pay a \$1.76 Million Criminal Penalty to Resolve Violations of the Foreign Corrupt Practices Act (Dec. 20, 2011), <http://www.justice.gov/opa/pr/2011/December/11-crm-1678.html>.

33. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Magyar Telekom and Deutsche Telekom Resolve Foreign Corrupt Practices Act Investigation and Agree to Pay Nearly \$64 Million in Combined Criminal Penalties (Dec. 29, 2011), <http://www.justice.gov/opa/pr/2011/December/11-crm-1714.html>.

34. United States v. Smith, No. 8:07-cr-00069-AG (C.D. Cal. Jan. 11, 2011), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/smith/01-11-11/smith-leo-amended.pdf>.

followed by six months of home confinement for bribing an official at the U.K. Ministry of Defence.

2. *Manuel Salvoch*³⁵

On January 12, Manuel Salvoch, former Latin Node CFO, pled guilty to conspiracy to violate the FCPA in connection with telecommunications deals in Honduras.

3. *Juan Pablo Vasquez*³⁶

On January 21, Juan Pablo Vasquez, former Latin Node Chief Commercial Officer, pled guilty to conspiracy to violate the FCPA.

4. *Antonio Perez*³⁷

On January 21, Haiti Teleco defendant Antonio Perez was sentenced to a two-year prison term.

5. *Paul W. Jennings*³⁸

On January 24, former Innospec CEO Paul W. Jennings settled an FCPA enforcement action with the SEC for aiding and abetting Innospec's FCPA violations in Iraq. He agreed to disgorge \$116,092 plus pre-judgment interest of \$12,945. He paid a civil penalty of \$100,000.

6. *Daniel Alvarez*³⁹

On March 1, Africa-Sting/Shot-Show defendant Daniel Alvarez pled guilty to two counts of conspiracy to violate the FCPA.

7. *Jeffrey Tesler*⁴⁰

Following extradition from the United Kingdom, Jeffrey Tesler, the U.K. solicitor who served as a consultant to the TSKJ consortium in Nigeria, pled guilty in Houston court on March 11 to violating the FCPA. He agreed to forfeit over \$148 million.

35. *United States v. Salvoch*, No. 1:10-cr-20893-HUCK (S.D. Fla. Jan. 12, 2011), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/salvoch/01-12-11/salvoch-plea.pdf>.

36. Press Release, Dep't of Justice Office of Pub. Affairs, Former CEO of U.S. Telecomms. Co. Pleads Guilty to Foreign Bribery Conspiracy (May 19, 2011), <http://www.justice.gov/opa/pr/2011/May/11-crm-644.html>.

37. Press Release, Dep't of Justice Office of Pub. Affairs, Former Controller of a Miami-Dade County Telecommunications Company Sentenced to 24 Months in Prison for His Role in Foreign Bribery Scheme (Jan. 21, 2011), <http://www.justice.gov/opa/pr/2011/January/11-crm-091.html>.

38. Paul Jennings, Litig. Release No. 21822, 2011 WL 216163 (Jan. 24, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr21822.htm>.

39. *Guilty Plea by Shot-Show Defendant*, FCPA BLOG (Apr. 29, 2011, 7:13 AM), <http://www.fcpablog.com/blog/2011/4/29/guilty-plea-by-shot-show-defendant.html>.

40. Press Release, Dep't of Justice Office of Pub. Affairs, UK Solicitor Pleads Guilty for Role in Bribing Nigerian Government Officials as Part of KBR Joint Venture Scheme (Mar. 11, 2011), <http://www.justice.gov/opa/pr/2011/March/11-crm-313.html>.

8. *Jonathan Spiller*⁴¹

On March 29, Africa-Sting/Shot-Show defendant Jonathan Spiller pled guilty to one count of conspiracy to violate the FCPA.

9. *Haim Geri*⁴²

On April 28, Africa-Sting/Shot-Show defendant Haim Geri pled guilty to one count of conspiracy to violate the FCPA.

10. *Flavio Ricotti*⁴³

On April 29, Flavio Ricotti, former CCI director, pled guilty to one count of conspiracy to violate the FCPA. Ricotti was extradited to the United States following his arrest in Germany in February 2010.

11. *Manuel Caceres*⁴⁴

On May 18, Manuel Caceres, former Vice President of Business Development at Latin Node, pled guilty to conspiracy to violate the FCPA.

12. *Gerald and Patricia Green*⁴⁵

On May 29, the Greens were released from federal custody after serving their six-month sentences for paying bribes to a Thai official in exchange for film festival contracts. On August 23, the government dropped its appeal of defendants' sentences. The Greens were the first husband-and-wife defendants to be convicted of violating the FCPA.

13. *Washington Vasconez Cruz and Amadeus Richers*⁴⁶

On July 13, Cinergy president Washington Vasconez Cruz and Cinergy director Amadeus Richers were indicted for FCPA violations, wire fraud, and money laundering in connection with the Haiti Teleco matter.

41. *Guilty Plea by Shot-Show Defendant*, *supra* note 39; Mike Scarcella, *Cooperator in FCPA Sting Case Testifies For Government*, THE BLOG OF LEGAL TIMES (May 31, 2011, 2:01 PM), <http://legaltimes.typepad.com/blt/2011/05/cooperator-in-fcpa-sting-case-testifies-for-government.html>.

42. *Guilty Plea By Shot-Show Defendant*, *supra* note 39.

43. Press Release, Dep't of Justice Office of Pub. Affairs, Italian Executive of California Valve Company Pleads Guilty to Foreign Bribery Offenses (Apr. 29, 2011), <http://www.justice.gov/opa/pr/2011/April/11-crm-545.html>.

44. Former CEO of U.S. Telecomms. Co. Pleads Guilty to Foreign Bribery Conspiracy, *supra* note 36.

45. William McGrath, *Prosecutors Drop Appeal of Short Sentence in Green FCPA Case*, FEDERAL SECURITIES LAW BLOG (Aug. 29, 2011), <http://www.fedseclaw.com/2011/08/articles/foreign-corrupt-practices-act-1/prosecutors-drop-appeal-of-short-sentence-in-green-fcpa-case/#axzz1f8A9cOYo>; *Enforcement Report for Q-2 '11*, FCPA BLOG (July 1, 2011), <http://www.fcpablog.com/blog/tag/gerald-green?currentPage=2>.

46. Florida Telecommunications Company, Two Executives, an Intermediary and Two Former Haitian Government Officials Indicted for Their Alleged Participation in Foreign Bribery Scheme, *supra* note 28.

14. *Jorge Granados*⁴⁷

On September 7, Jorge Granados, former Latin Node CEO, was sentenced to forty-six months in prison, to be followed by two years of supervised release. Granados pled guilty to conspiracy to violate the FCPA on May 19.

15. *Leesen Chang*⁴⁸

On October 13, Leesen Chang, the former Vice President of Sales at Watts' Chinese subsidiary, settled a civil action with the SEC, agreeing to a \$25,000 penalty.

16. *Si Chan Wooh*⁴⁹

October 14, 2011, the DOJ dismissed its FCPA charges against Wooh, the former Schnitzer Steel executive who previously pled guilty in 2007 and settled with the SEC. The decision apparently followed a protracted legal battle over whether Wooh should have been charged in the first place. The FBI agent who investigated the case reportedly told prosecutors that Wooh was, in fact, a whistleblower.

17. *Uriel Sharef, Herbert Steffen, Andres Truppel, Ulrich Bock, Stephan Signer, Eberhard Reichert, Carlos Sergi and Miguel Czych*⁵⁰

On December 13, six former Siemens executives and two intermediaries were indicted for paying over \$100 million in bribes to Argentine officials. The SEC filed civil actions.

18. *Frederic Bourke, Jr.*⁵¹

On December 14, the Second Circuit affirmed the 2009 conviction of the Dooney & Bourke founder.

19. *Ousama Naaman*⁵²

On December 22, the former Innospec agent was sentenced to 30 months imprisonment.

47. Press Release, Dep't of Justice Office of Pub. Affairs, Former CEO of U.S. Telecommunications Company Sentenced to 46 Months in Prison for Bribing Foreign Government Officials (Sept. 8, 2011), <http://www.justice.gov/opa/pr/2011/September/11-crm-1155.html>.

48. Watts Water Tech., Inc., Exchange Act Release No. 65555, 2011 WL 4860051 (Oct. 13, 2011), available at <http://www.sec.gov/litigation/admin/2011/34-65555.pdf>.

49. Joe Palazzolo, *DOJ Drops Bribery Charges against Whistleblower in Schnitzer Steel Case*, WALL ST. J., Oct. 18, 2011, <http://blogs.wsj.com/corruption-currents/2011/10/18/doj-drops-bribery-charges-against-whistleblower-in-schnitzer-steel-case/>.

50. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Eight Former Senior Executives and Agents of Siemens Charged in Alleged \$100 Million Foreign Bribe Scheme (Dec. 13, 2011), <http://www.justice.gov/opa/pr/2011/December/11-crm-1626.html>.

51. United States v. Kozeny, No. 09-4704-cr, 2011 WL 6184494 (2d Cir. Dec. 14, 2011).

52. Press Release, U.S. Dep't of Justice Office of Pub. Affairs, Innospec Agent Sentenced to 30 Months in Prison for Bribing Iraqi Officials and Paying Kickbacks Under the U.N. Oil for Food Program (Dec. 22, 2011), <http://www.justice.gov/opa/pr/2011/December/11-crm-1701.html>.

II. Anti-Bribery Enforcement Abroad

A. CASES

1. *Australia*

In July, Australia brought its first foreign bribery charges. Christian Boillot, a former sales executive with Note Printing Australia (NPA), was extradited from Germany to Australia to face bribery charges. Boillot, NPA, Securrency International, and former executives from both companies face charges for allegedly bribing Indonesian, Malaysian, and Vietnamese officials between 1999 and 2005 to secure bank note printing contracts.⁵³

2. *Canada*

In June, Canada's Niko Resources Ltd. settled with the Crown Prosecution, pleading guilty to one count of bribery under the Corruption of Foreign Public Officials Act. The charges relate to incidents that occurred in 2005 when Niko provided a car valued at \$190,984 for the personal use of Bangladesh's then-Energy Minister and paid for his travel to several North American cities. Niko was fined \$9.499 million, which included a fifteen percent victim fine surcharge. The company was also sentenced to three years of court supervision.⁵⁴

3. *China*

In December, Guangzhou Intermediate Court sentenced Australian CEO, Matthew Ng, to 13 years imprisonment for embezzlement and bribery related to commercial disputes between London-listed Et-China and a local government-owned joint venture partner. Et-China's chairman and CFO were also sentenced.⁵⁵

4. *Costa Rica*

In April, former President of Costa Rica Miguel Ángel Rodríguez Echeverría was sentenced to five years in prison for his role as instigator of aggravated corruption in the ICE-Alcatel matter.⁵⁶

53. MEDIA RELEASE, AUSTRALIAN FEDERAL POLICE, FOREIGN BRIBERY CHARGES LAID IN AUSTRALIA (July 1, 2011), <http://www.afp.gov.au/media-centre/news/afp/2011/july/foreign-bribery-charges-laid-in-australia.aspx>; Richard Baker and Nick McKenzie, *Printing Man on Bribery Charges*, *The Age*, Sept. 13, 2011, <http://www.theage.com.au/national/printing-man-on-bribery-charges-20110912-1k621.html>.

54. Press Release, Niko Resources Ltd., Niko Agrees to Pay \$9,499,000 According to Agreed Statement of Facts (June 24, 2011), http://www.nikoresources.com/upload/news_release/142/01/press-release.pdf.

55. BBC, Australian Matthew Ng jailed in China for Embezzlement (Dec. 6, 2011), <http://www.bbc.co.uk/news/world-asia-pacific-16044612>.

56. Henriette Jacobsen, *Former Costa Rican President Sentenced to Five Years in Prison for Corruption*, *THE COSTA RICA NEWS*, Apr. 27, 2011, <http://thecostaricanews.com/former-costa-rican-president-sentenced-to-five-years-in-prison-for-corruption/6754>.

5. *France*

In June, it was announced that the French government and Thales S.A. will pay Taiwan €630 million in compensation to settle a twenty-year-old bribery scandal related to a deal to sell Taiwan six Lafayette-class frigates built by Thomson-CSF (now Thales) and state-owned naval shipyard DCN. The Paris Appeals Court confirmed a 2010 arbitral decision imposing a fine of over €630 million, including interest, the largest ever in a French corruption case.⁵⁷

6. *Germany*

In October 2011, Ferrostaal shareholders agreed that Ferrostaal would pay €149 million in fines as part of a possible agreement with Munich's Regional Court and the German Public Prosecutor's Office to settle bribery charges related to the sale of submarines to Greece.⁵⁸

7. *Nigeria*

The Nigerian government reached settlements with Siemens AG, Royal Dutch Shell PLC, Halliburton Co., Snamprogetti Netherlands BV, Noble Corp., Tidewater Inc., and JGC Corp. as follow-on actions to U.S. FCPA cases.⁵⁹

8. *South Korea*

In possibly the first Korean foreign bribery case involving a Chinese official, the Incheon District Prosecutor indicted one representative of China Eastern Airlines' Korean branch, a Dae-a Eastern Air Co. director, and a Korean travel agency director for violating Korea's foreign bribery law. From 2006-2011, Dae-a Eastern Air allegedly paid approximately KRW 6.7 billion to obtain reduced transport service fees and the right to sell China Eastern Airline tickets.⁶⁰

9. *Switzerland*

In November 2011, the Swiss Office of Attorney General and Alstom SA announced a settlement closing a four-year Swiss investigation into various Alstom entities. An Alstom

57. Thierry Leveque, *France, Thales to Pay Record Bribes Fine*, REUTERS, June 10, 2011, <http://in.reuters.com/article/2011/06/09/idINIndia-57610220110609>; *Taiwan's Frigate Corruption Investigation: Full Steam Ahead*, DEFENSE INDUSTRY DAILY, Oct. 13, 2011, <http://www.defenseindustrydaily.com/full-steam-ahead-for-taiwan-frigate-corruption-investigation-01546/>.

58. Press Release, Ferrostaal, Ferrostaal is Prepared to Agree to a Settlement with the Public Prosecutor's Office (Oct. 14, 2011), *available at* [http://www.ferrostaal.com/fr/company/media-and-publications/news/ferrostaal-is-prepared-to-agree-to-a-settlement-with-the-public-prosecutor-s-office/?tx_editfiltersystem_pi1\[cmd\]=detail](http://www.ferrostaal.com/fr/company/media-and-publications/news/ferrostaal-is-prepared-to-agree-to-a-settlement-with-the-public-prosecutor-s-office/?tx_editfiltersystem_pi1[cmd]=detail).

59. *See, e.g.*, Joe Palazzolo, TIDEWATER SETTLES NIGERIAN BRIBERY PROBE, Wall St. J. Blog (Mar. 4, 2011, 10:23 AM), http://wsj.com/corruption-currents/2011/03/04/tidewater-settles-nigerian-bribery-probe/?mod=google_news_blog; *see also* Joe Palazzolo, NOBLE CORP. SETTLES NIGERIAN CORRUPTION PROBE, Wall St. J. Blog (Jan. 31, 2011, 11:08 AM), <http://blogs.wsj.com/corruption-currents/2011/01/31/noble-corp-settles-nigerian-corruption-probe>.

60. The Trace Compendium, Dae-a Eastern Air Co., TRACE INTERNATIONAL, <https://www.traceinternational2.org/compendium/view.asp?id=351>.

subsidiary was sanctioned for “corporate negligence” in connection with improper payments in Latvia, Malaysia, and Tunisia. It agreed to pay a CHF 2.5 million fine and CHF 36 million in returned profits.⁶¹

10. *United Kingdom*

a. In February 2011, M.W. Kellogg agreed to pay £7 million under a Serious Fraud Office (SFO) civil recovery order. Kellogg profited from illegally obtained contracts to build LNG facilities in Nigeria. The action stems from over £100m in bribes that KBR (Kellogg’s parent company) and KBR’s consortium partners paid over a ten-year period.⁶²

b. In April 2011, Johnson & Johnson’s U.K.-based medical device subsidiary, DePuy International Ltd. (DPI), settled with the SFO. DPI bribed Greek medical professionals, who were public employees. DPI was ordered to pay £4.829 million, plus prosecution costs, under a civil recovery order.⁶³

c. In July 2011, the Financial Services Authority fined Willis Ltd. £6.895million, which included a thirty percent discount for settling the investigation at an early stage. From 2005-2009, Willis paid third parties in Egypt and Russia to help win and retain business.⁶⁴

d. In June 2011, Macmillan Publishers Ltd. (MPL) agreed to pay over £11million under an SFO civil recovery order. The SFO debarred Macmillan in 2010 for bribing Sudanese officials over a six-year period in exchange for approximately £11 million in business advantages. MPL’s actions were brought to the SFO’s attention following a report from the World Bank, which debarred MacMillan for a minimum of three years due to its actions in Sudan. MPL self-reported to the SFO in 2010.⁶⁵

e. In October 2011, the SFO charged three former Innospec Ltd. executives with bribery in Indonesia and Iraq. Innospec settled with U.S. and U.K. regulators in March 2010.⁶⁶

61. *Criminal Proceedings against Alstom Entities are Brought to a Close*, THE FED. AUTHS. OF THE SWISS CONFEDERATION (Nov. 22, 2011), <http://www.news.admin.ch/message/index.html?lang=en&msg-id=42300>.

62. Jonathan Russell, *SFO Settles Nigeria Bribery Case for £7m*, THE TELEGRAPH, Feb. 17, 2011, <http://www.telegraph.co.uk/finance/newsbysector/industry/8329298/SFO-settles-Nigeria-bribery-case-for-7m.html>.

63. Press Release, Serious Fraud Office, DePuy International Limited Ordered to Pay 4.829 Million Pounds in Civil Recovery Order (Apr. 8, 2011), *available at* <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/deputy-international-limited-ordered-to-pay-4829-million-pounds-in-civil-recovery-order.aspx>.

64. Press Release, FSA, FSA Fines Willis Limited £6.895 Million for Anti-bribery and Corruption Systems and Controls Failings (July 21, 2011), <http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml>.

65. Press Release, Serious Fraud Office, Action on Macmillan Publishers Limited (July 22, 2011), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/action-on-macmillan-publishers-limited.aspx>.

66. Press Release, Serious Fraud Office, Innospec Ltd: Former Executive in Court on Fraud and Corruption Charges (Oct. 25, 2011), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/innospec-ltd-former-executive-in-court-on-fraud-and-corruption-charges.aspx>; Press Release, Serious Fraud Office, Innospec Ltd: Two More Executives Charged With Corruption (Oct. 27, 2011), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/innospec-ltd-two-more-executives-charged-with-corruption.aspx>.

f. In October 2011, Victor Dahdaleh, a Canadian and British national, was arrested and charged with corruption offenses relating to his role as an agent in Bahrain for U.S. aluminum producer, Alcoa Inc.⁶⁷

g. In November 2011, London court clerk Munir Patel pled guilty to seeking bribes for clearing traffic tickets. Patel was sentenced to six years imprisonment for misconduct in a public office and three years under the U.K. Bribery Act 2010 – the first prosecution under the new law.⁶⁸

B. NEW LEGISLATION AND INITIATIVES

1. *Australia*

In September 2011, the Justice Minister announced that over \$700,000 in confiscated criminal proceeds would be utilized under Australia's first National Anti-Corruption Plan. The Plan involves reviewing existing measures at Federal, State, and Territory levels to minimize legal weaknesses.⁶⁹

2. *Bangladesh*

In May 2011, Bangladesh's Anti-Corruption Commission approved the Information Disclosure Policy of 2011, setting forth certain rights of corruption suspects by disallowing the dissemination of primary information about allegations against them until an investigation has been concluded.⁷⁰

3. *Bhutan*

In May 2011, Bhutan's Parliament enacted the Anti-Corruption Act of Bhutan 2011 (ACA), which repeals the previous anti-corruption law and substantially expands the criminal and civil legislation against corruption. ACA 2011 adds extradition provisions, confiscation rules, international cooperation mechanisms, and asset declaration powers. The new law is much more comprehensive and covers nearly all public and private parties. At the same time, it reduces certain sentences.⁷¹

67. Press Release, Serious Fraud Office, Victor Dahdaleh Charged With Bribery (Oct. 24, 2011), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/victor-dahdaleh-charged-with-bribery.aspx>.

68. Lindsay Fortado, *London Court Clerk Sentenced to Six Years in Bribery Act Case*, BLOOMBERG, Nov. 18, 2011, <http://www.bloomberg.com/news/print/2011-11-18/london-court-clerk-sentenced-to-six-years-in-bribery-act-case.html>

69. Press Release, Minister of Home Affairs, Proceeds of Crime to be Used to Fight Corruption (Sept. 22, 2011), http://www.ag.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases_2011_ThirdQuarter_22September2011-Proceedsofcrimetobeusedtofightcorruption.

70. *Info Disclosure Policy Gets ACC Nod*, DAILY SUN (DHAKA) (June 1, 2011), http://www.daily-sun.com/?view=details&type=daily_sun_news&pub_no=233&cat_id=2&menu_id=1&news_type_id=1&index=7&archiev=yes&arch_date=01-06-2011+information+disclosure+policy+of+2011+corruption&ct=clnk.

71. Anti-Corruption Act of Bhutan 2011, *available at* http://www.anti-corruption.org.bt/sites/default/files/ACA%202011_1.pdf.

4. *China*

In February 2011, China's National People's Congress amended the PRC Criminal Law, criminalizing foreign bribery for the first time and expanding anti-bribery provisions to include bribery of officials from international organizations. The law applies to all PRC citizens, irrespective of location, all persons physically present in the PRC (regardless of nationality), and all companies, enterprises, and institutions organized under PRC law, including joint ventures, wholly foreign-owned enterprises, and representative offices. There are no affirmative exceptions, exemptions, or defenses set forth in the new law. Violators are subject to imprisonment and fines. The amendments went into effect on May 1, 2011.⁷²

5. *Colombia*

In November 2011, Colombia was invited to join the OECD Working Group on Bribery, a precursor to adopting the Anti-Bribery Convention.⁷³

6. *India*

In May 2011, India ratified the UN Convention against Corruption (UNCAC).⁷⁴

7. *Ireland*

In November 2011, Ireland ratified the UNCAC.⁷⁵

8. *Kuwait*

In September 2011, Kuwait's cabinet passed an anti-corruption draft law that is awaiting further approval from Parliament. The law covers acts of manipulation of public tenders and auctions, bribery, counterfeiting, forgery, and graft. It includes provisions to establish a national anti-corruption authority and contains articles on financial disclosures and money laundering, with penalties of up to seven years of prison.⁷⁶

72. Paul Hastings, Extraterritorial Effect of the Anti-Corruption Law of the People's Republic of China, <http://www.paulhastings.com/publicationDetail.aspx?publicationID=1894>; LANEY ZHANG, *China: Eighth Amendment to Criminal Law Passed*, Law Library of Cong., Apr. 7, 2011, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402612_text.

73. Luke Balleny, *Colombia to join OECD anti-bribery convention*, TRUSTLAW, Nov. 30, 2011, <http://www.trust.org/trustlaw/news/colombia-to-join-oecd-anti-bribery-convention>.

74. *Government Working to Make Private Sector Bribery a Criminal Offence, Says Prime Minister*, NDTV (Oct. 22, 2011), <http://www.ndtv.com/article/india/government-working-to-make-private-sector-bribery-a-criminal-offence-says-prime-minister-143208>.

75. UNODC, available at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

76. *Kuwait: Government Accepts Anti-Corruption Law*, REGIONAL ANTI-CORRUPTION INITIATIVE (Mar. 28, 2011), <http://www.rai-see.org/news/world/1238-kuwait-government-accepts-anti-corruption-law.html>; *Kuwait Government Passes Anti-Corruption Draft Law*, ARABTIMESONLINE.COM (Sept. 25, 2011), <http://www.arabtimesonline.com/NewsDetails/tabid/96/smId/414/ArticleID/174238/refTab/69/t/Kuwait-government-passes-anti-corruption-draft-law/Default.aspx>.

9. *Luxembourg*

In February 2011, Luxembourg adopted regulations providing for nationality jurisdiction under its foreign bribery law and whistleblower protection under local labor laws.⁷⁷ This was a follow-up to OECD recommendations.

10. *Morocco*

In March 2011, Morocco adopted legislation that protects “witnesses, victims and whistleblowers” of public corruption.⁷⁸

11. *Mozambique*

In August 2011, Mozambique enacted new legislation criminalizing embezzlement, graft, and bribery. State investigators may now utilize “phone taps and video footage as evidence in court cases.” Whistleblowers and witnesses are now protected.⁷⁹

12. *Nepal*

In February 2011, Nepal’s Legislature-Parliament ratified UNCAC.⁸⁰

13. *Russia*

In May 2011, President Dmitry Medvedev signed law No. 97-FZ, amending the Russian Criminal Code to provide new punishments for those involved in foreign bribery schemes, including corporate entities, intermediaries, and bribe recipients. The amendment specifically prohibits bribing domestic or foreign government officials, prohibits aiding and abetting, and increases penalties. It also provides immunity for anyone voluntarily reporting violations or assisting government investigations.⁸¹

14. *Slovakia*

In January 2011, legislation came into effect mandating disclosure of all contracts with public authorities and state-owned entities where certain types of state funds are involved. Contracts not published online only have legal effect if disclosed. The law applies to all

77. Nadine Bogelmann, *New Anti-Corruption Provisions in Luxembourg Law*, MOLITOR (Apr. 2011), <http://www.molitorlegal.lu/news/new-anti-corruption-provisions-luxembourg-law>.

78. *Morocco Adopts Anti-Corruption Plan*, NEWS MOROCCO (Apr. 2, 2011), <http://news-morocco.com/morocco-adopts-anti-corruption-plan-official.html>.

79. *Mozambique Proposes New Anti-Corruption Laws*, RADIO NETH. WORLDWIDE (July 27, 2011), <http://www.rnw.nl/africa/bulletin/mozambique-proposes-new-anti-corruption-laws>.

80. *Parliament Approves UN Convention against Corruption*, THE HIMALAYAN TIMES ONLINE (Feb. 24, 2011), <http://www.thehimalayantimes.com/printNepaliNews.php?id=277602>.

81. *Medvedev Signs Landmark Anti-Corruption Law*, Ria Novosti (Apr. 5, 2011), <http://en.rian.ru/russia/20110504/163854280.html>; Mike Koehler, *Russian FCPA: The Law Has Been Signed, Will The Culture Change Result?*, FCPA Professor (June 17, 2011, 5:03 AM), <http://fcpprofessor.blogspot.com/2011/06/russian-fcpa-law-has-been-signed-will.html>.

contracts with state, regional, and municipal authorities. Contracts with entities established by law or by public authorities are also within the new law.⁸²

15. *South Korea*

In September 2011, statutory protections for whistleblowers in Korea went into effect. The law protects private sector whistleblowers and allows the Anti-Corruption and Civil Rights Commission to receive reports of foreign bribery from the private sector. The new law also sets forth additional civil and administrative sanctions for foreign bribery. These include government contractor debarment and contract cancellation provisions. A new 'one-strike-out policy' was instituted under which any official found guilty of corruption can be immediately removed from office.⁸³

16. *Taiwan*

In April 2011, Taiwan passed the Ministry of Justice Anti-Corruption Administration Organic Act, establishing a new agency responsible for implementing Taiwan's anti-corruption policies and prosecuting corruption cases. In July 2011, the Anti-Corruption Statute was revised. It criminalizes bribing public officials and provides for related penalties. The revised statute defines bribery broadly to include improper entertainment and hospitality.⁸⁴

17. *Thailand*

In September 2011, Thailand amended its National Anti-Corruption Commission Act. Government procurement projects with budgets of over 500,000 baht must now be disclosed. Government contractors must maintain separate bank accounts and produce details of project cash flows. Disbursements to contractors are now regulated. The amendments also include new protections for officials reporting suspected acts of bribery.⁸⁵ The requirements go into effect on January 1, 2012.

82. Jana Liptakova, *New Legislation in the Spotlight*, THE SLOVAK SPECTATOR, Apr. 11, 2011, http://spectator.sme.sk/articles/view/42258/24/new_legislation_in_the_spotlight.html; *New Anti-Corruption Act in Slovakia*, TAX FREE NEWS (Apr. 11, 2011, 5:16 PM), <http://www.taxfreenews.com/?p=1037>.

83. ORG. FOR ECON. COOPERATION AND DEV. [OECD], PHASE 3 REPORT ON IMPLEMENTING THE ANTI-BRIBERY CONVENTION IN KOREA 20, 24 (2011), available at <http://www.oecd.org/dataoecd/59/31/48897608.pdf>.

84. RICH CHANG, *Legislative Group Approves Change to Anti-Corruption Act*, Taipei Times, MAY 24, 2011, [HTTP://WWW.TAIPEITIMES.COM/News/TAIWAN/ARCHIVES/2011/05/24/2003504028](http://www.taipeitimes.com/News/TAIWAN/ARCHIVES/2011/05/24/2003504028); ELAINE HOU, *Taiwan's Legislature OKs Anti-Corruption Agency*, Taiwan Today, Apr. 6, 2011, <http://taiwantoday.tw/ct.asp?xItem=158745&ctNode=452&mp=9>; Wendy Zeldin, *Taiwan: Anti-Corruption Agency Law Adopted*, Law Library of Cong., APR. 13, 2011, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402627_text; Press Release, GOVERNMENT INFORMATION OFFICE, CLEAN GOVERNMENT: LAW REVISION SUBJECTS BRIBE GIVERS TO PUNISHMENT (July 7, 2011), <http://www.gio.gov.tw/ct.asp?xItem=93047&ctNode=2463&mp=807>.

85. *Thailand Steps Up Anti-Corruption Drive*, TRUSTLAW (Sept. 6, 2011), <http://www.trust.org/trustlaw/news/thailand-steps-up-anti-corruption-drive>.

18. *Tunisia*

In February 2011, Decree Number 7 of 2011 created a National Fact-Finding Committee on Corruption and Embezzlement to investigate “corruption committed by the old regime, and to create new regulations to combat corruption.”⁸⁶

19. *Ukraine*

In July 2011, Law Number 3206, the Prevention of and Counteraction against Corrupt Practices Act, came into effect along with supporting legislation. The Act expands the definition of government official, sets new limits on gifts and hospitality and outside business activities by public servants and their families, establishes new provisions on income declaration, and creates a registry of those convicted of corrupt acts. Certain provisions relating to financial controls and personal information verification were delayed until January 1, 2012.⁸⁷

20. *United Kingdom*

The Bribery Act 2010 took effect in July, following guidance issued by the Ministry of Justice in March.⁸⁸ In November 2011, the Serious Fraud Office launched a fraud and bribery whistleblower hotline that connects callers directly to SFO operatives.⁸⁹

III. Treaties, International Organizations, and Civil Society⁹⁰

A. INTERNATIONAL ANTI-CORRUPTION TREATIES

In May 2011, the Organization for Economic Cooperation and Development (OECD) had a number of developments. The OECD Council released the fourth revision of its *Guidelines for Multinational Enterprises*. The revision includes new recommendations on human rights abuse, company responsibility for supply chains, and an expanded section on bribery.⁹¹

86. *Legal Compendium: Specialized Anti-Corruption Laws*, PROGRAMME ON GOVERNANCE IN THE ARAB REGION, <http://www.undp-pogar.org/resources/ac/legal.aspx?lc=1>; see also Tunisia Country Profile, Public Anti-Corruption Initiatives, BUSINESS ANTI-CORRUPTION PORTAL, <http://www.business-anti-corruption.eu/en/country-profiles/middle-east-north-africa/tunisia/initiatives/public-anti-corruption-initiatives/>.

87. Maria Ivanova, *Ukraine Advances on Anti-Corruption Practices*, CANADA NEWswire, June 10, 2011, <http://www.newswire.ca/en/story/731917/ukraine-advances-on-anti-corruption-practices>; Anzhela Makhinova & Nataliya Mykolska, *New Ukrainian Anticorruption Legislation*, VASIL KISIL & PARTNERS (July 2011), http://www.kisilandpartners.com/images/VKP-Legal_Alert_Anticorruption_July2011_ENG%282%29.pdf; *TalkingPoint: Anti-Corruption Legislation in the Ukraine*, FINANCIER WORLDWIDE (Sept. 2011), <http://www.financierworldwide.com/article.php?id=8543>.

88. The Bribery Act 2010 Guidance (U.K.), at 2-3, 8, available at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>.

89. Press Release, Serious Fraud Office, Blow the Whistle! New Route for Insiders to Unmask Fraud and Bribery (Nov. 1, 2011), <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/blow-the-whistle-new-route-for-insiders-to-unmask-fraud-and-bribery.aspx>.

90. Tracy Huang and Lakindra Mohr, Associates at PricewaterhouseCoopers, contributed to the research for this section.

91. *2011 Update of the OECD Guidelines for Multinational Enterprises*, OECD (May 25, 2011), http://www.oecd.org/document/33/0,3746,en_2649_34889_44086753_1_1_1_1,00.html; *New OECD Guidelines to*

The OECD also adopted a *Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.⁹² A working group of government, industry, and civil society wrote the recommendation for companies that use minerals from eastern Congo and neighboring countries.

Russia acceded to the OECD Anti-Bribery Convention and joined the Working Group on Bribery after adopting legislation that criminalizes foreign bribery.⁹³

In July 2011, the Working Group released its *2010 Annual Report*, which includes enforcement data for all parties. Highlights reveal that ninety-one entities and 199 individuals were criminally sanctioned for foreign bribery by thirteen parties. Fifty-four individuals received prison sentences. Approximately “260 investigations are ongoing in fifteen parties.”⁹⁴ The Group also released Phase 3 reports on Korea,⁹⁵ Mexico,⁹⁶ and Norway.⁹⁷

India ratified the UNCAC in May 2011.⁹⁸ In September 2011, UNCAC published executive summaries of its first “compliance report cards.” The reports, issued by the Implementation Review Group, assess compliance in Finland, Spain, Mongolia, and Uganda.⁹⁹

In September 2011, the Stolen Asset Recovery (StAR) Initiative, a joint program of the United Nations Office on Drugs and Crime (UNODC) and the World Bank, launched the UNCAC Legal Library. The Library contains anti-corruption legislation from more than 175 countries. UNODC also launched a web-based portal known as TRACK (Tools and Resources for Anti-Corruption Knowledge).¹⁰⁰

Protect Human Rights and Social Development, OECD (May 25, 2011), http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html.

92. *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, at 3, OECD (2011), <http://www.oecd.org/dataoecd/62/30/46740847.pdf>.

93. *OECD Invites Russia to Join Anti-Bribery Convention*, OECD (May 25, 2011), http://www.oecd.org/document/24/0,3746,en_21571361_44315115_47983768_1_1_1_1,00.htm.

94. *OECD Working Group on Bribery—2010 Annual Report*, at 14–15, OECD (2011), <http://www.oecd.org/dataoecd/7/15/47628703.pdf>.

95. See OECD PHASE 3 REPORT KOREA, *supra* note 83, at 4.

96. See *Phase 3 Report on Implementing the Anti-Bribery Convention in Mexico*, at 4, OECD (Oct. 14, 2011), <http://www.oecd.org/dataoecd/60/7/48897634.pdf>.

97. *Phase 3 Report on Implementing the Anti-Bribery Convention in Norway*, at 4, OECD (June 23, 2011), <http://www.oecd.org/dataoecd/38/59/48286802.pdf>.

98. Samuel Rubinfeld, *India Ratifies UN Convention against Corruption*, WALL. ST. J. BLOG (May 12, 2011, 5:54 PM), <http://blogs.wsj.com/corruption-currents/2011/05/12/india-ratifies-un-convention-against-corruption>.

99. Conference of the States Parties to the United Nations Convention Against Corruption, Implementation, Vienna, Austria, Sept. 7–9, 2011, *Review of Implementation of the United Nations Convention Against Corruption*, at 1, U.N. Doc. CAC/COSP/IRG/I/1/1* (June 7, 2011), available at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1183525e.pdf>; Conference of the States Parties to the United Nations Convention Against Corruption, Vienna, Austria, Sept. 7–9, 2011, *Review of Implementation of the United Nations Convention Against Corruption*, at 1, CAC/COSP/IRG/I/1/Add.1 (Aug. 25, 2011), available at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1184854e.pdf>.

100. Press Release, The World Bank and United Nations Office on Drugs and Crime, UNCAC Legal Library Launched: New Database of Anti-Corruption Legislation from 178 States (Sept. 1, 2011), http://www.unodc.org/documents/corruption/TRACK/FINAL_StAR_UNCAC_Legal_Library_Press_Release.pdf.

B. PUBLIC INTERNATIONAL ORGANIZATIONS

In September 2011, the International Finance Corp. joined other leading development finance institutions in launching the *Corporate Governance Development Framework*¹⁰¹ to help institutions set consistent corporate governance and due diligence standards for companies in which they invest, particularly in emerging markets.

In August 2011, the World Bank's Independent Evaluation Group (IEG) issued its assessment of the Bank's Governance and Anticorruption Strategy and Implementation Plan. The IEG recommended improving the metrics that measure "governance performance, a more harmonized and consistent approach to risk management, and a more strategic allocation of internal resources."¹⁰² It also stressed the need for the Bank to focus on building governance capabilities within borrower countries.¹⁰³

For the first time, the World Bank reinstated a suspended entity ahead of schedule. Lahmeyer International, a German engineering firm, was suspended from bidding for seven years in 2006 after the Bank found that it had bribed a Lesotho official. In reinstating the company this August 2011, the Bank noted that Lahmeyer had implemented a compliance management system.¹⁰⁴

In April 2011, the Inter-American Development Bank "strengthen[ed] [its] anti-corruption framework [and] expand[ed] [its] investigative and sanctioning capacity." It introduced expanded definitions, modified procurement procedures to implement cross-debarment agreements, and set up a new Case Officer and sanctions committee structure.¹⁰⁵

C. CIVIL SOCIETY EFFORTS

In June 2011, the World Justice Project launched its second annual *Rule of Law Index*, a quantitative assessment tool that measures countries' adherence to the rule of law.¹⁰⁶

In April 2011, Transparency International published the *Global Corruption Report: Climate Change*, which examines climate-related corruption risks and governance mechanisms.¹⁰⁷

101. *Corporate Governance Development Framework*, INT'L FIN. CORP. (Sept. 2011), http://www.ifc.org/ifcext/corporategovernance.nsf/Content/Corporate_Governance_Development_Framework.

102. Press Release, Independent Evaluation Group World Bank, Independent Evaluation Shows that (sic) World Bank Continues to Engage on Governance Issues in Countries, Calls for Systematic Improvements (Aug. 31, 2011), http://ieg.worldbank.org/content/dam/ieg/gac/gac_press_release.pdf.

103. *Id.*

104. Joe Palazzolo, *A First: World Bank Ends Debarment Early, Citing Good Compliance*, WALL ST. J. BLOG (Aug. 17, 2011, 4:24 PM), <http://blogs.wsj.com/corruption-currents/2011/08/17/a-first-world-bank-ends-debarment-early-citing-good-compliance>.

105. *IDB Strengthens Anti-Corruption Framework, Expands Investigative and Sanctioning Capacity*, INTER-AM. DEV. BANK (Mar. 23, 2011), <http://www.iadb.org/mobile/news/detail.cfm?lang=en&id=9170>.

106. *World Justice Project Rule of Law Index*, THE WORLD JUSTICE PROJECT, <http://worldjusticeproject.org/rule-of-law-index/> (last visited Jan. 12, 2012).

107. *Global Corruption Report: Climate Change*, TRANSPARENCY INT'L (Apr. 30, 2011), http://www.transparency.org/news_room/in_focus/2011/gcr_climate_change.

In October 2011, the International Chamber of Commerce released new *Rules on Combating Corruption* in response to G20 leaders' call to the business community.¹⁰⁸

In November 2011, Transparency International released the *2011 Bribe Payer's Index*, ranking the perceived likelihood of companies from twenty-eight countries to use bribery to win business abroad.¹⁰⁹ Russian and Chinese companies are perceived as most likely to bribe to win business and Dutch and Swiss companies least likely.

In June 2011, an independent evaluation report on the Extractive Industries Transparency Initiative (EITI) was released. The report highlighted the need for a review of EITI's standard assessment system. "The International Secretariat is [now] exploring alternative frameworks to assess compliance with the standard and EITI performance."¹¹⁰ In November 2011, the EITI released an overview of all seventy-four countries' implementation reports published through September 2011. The overview compiles key information such as total government revenues and companies' payments. The information is based on EITI Reports published in twenty-nine countries. The International Secretariat will publish the final version of the report in early 2012.¹¹¹

108. *ICC Rules on Combating Corruption*, at 3, 16-17, INTERNATIONAL CHAMBER OF COMMERCE (2011), http://www.iccwbo.org/uploadedFiles/ICC/policy/business_in_society/Statements/ICC_Rules_on_Combating_Corruption_2011edition.pdf.

109. *Bribe Payers Index Report 2011*, TRANSPARENCY INT'L, <http://bpi.transparency.org/results/> (last visited Jan. 12, 2012).

110. Dyveke Rogan, *Call for Tenders: Proposal for an EITI Rating Framework*, EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, Nov. 22, 2011, <http://eiti.org/news-events/call-tenders-proposal-eiti-rating-framework>.

111. Anders Tunold Krakenes, *Overview of All of the 74 EITI Reports Available*, EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (Nov. 28, 2011), <http://eiti.org/news-events/extracting-data-overview-all-eiti-reports>.

