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Foriegn Corrupt Practices

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Foreign Corrupt Practices

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Significant developments to deter corrupt practices in the conduct of international business took place in both international and domestic fora in 1998. These developments continue the global momentum in recent years toward the development and implementation of legal regimes to deter corrupt practices.

I. International Developments

The most noteworthy international developments relate to the implementation of the Organization for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) and the Council of Europe's newly adopted Criminal Law Convention on Corruption (Criminal Law Convention).[1] Though less dramatic, there continued to be developments with the ratification and implementation of the Organization of American States Inter-American Convention Against Corruption (Inter-American Convention)[2] and the European Union's Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Convention.[3]

A. OECD CONVENTION

The OECD Convention entered into force on February 15, 1999. Five of the ten OECD member countries with the largest export shares deposited their instruments of

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1. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions [hereinafter OECD Convention], OECD/DAFFE/IME/BR(97)16/FINAL (Dec. 18, 1997), *reprinted in* 37 I.L.M. 1 (1998). Council of Europe Criminal Law Convention [hereinafter Criminal Law Convention], (visited Mar. 4, 1999) <http://www.coe.fr/eng/legaltxt/173e.htm>.

2. Inter-American Convention Against Corruption [hereinafter Inter-American Convention], OEA/Ser.K/XXXIV.1, CICOR/doc.14/96 rev.2 (Mar. 29, 1996), *reprinted in* 35 I.L.M. 724 (1996).

3. Internal investigations at the multilateral-lending institutions focused added attention on the implementation and enforcement of recently adopted internal measures designed to deter corrupt practices.

ratification.[4] In total, twelve signatories had deposited their instruments of ratification by the time the OECD Convention entered into force. These countries included Iceland, Japan, Germany, Hungary, United States, Finland, United Kingdom, Canada, Norway, Bulgaria, Korea, and Greece.[5] A number of other signatories were expected to ratify the OECD Convention in early 1999.

The OECD's Working Group on Bribery has initiated follow-up efforts in two critical areas. One area relates to prohibiting payments made to or through political parties. In its current form, the OECD Convention does not specifically cover payments to political parties, party officials, or candidates for political office.[6] However, the negotiators did agree to an accelerated work plan to address several outstanding issues, including acts of bribery relating to foreign political parties and to persons in anticipation of their becoming foreign public officials.[7] The results of this review will be reported to OECD ministers at the meeting in 1999 of the Council on Combating Bribery in International Business Transactions (Council).

The other critical area is instituting procedures to evaluate the degree and adequacy of implementation of the OECD Convention. The Working Group on Bribery agreed upon a "rigorous" process of multilateral surveillance to ensure compliance with the OECD Convention and implementation of the Revised Recommendation of the OECD's Council.[8] Phase I will focus on evaluating whether the legal texts through which participants implement the OECD Convention meet the standard set by the OECD Convention as well as evaluating the initial steps being taken to implement other parts of the Revised Recommendation. This is to be completed by April of 2000. Phase II will follow and focus on the performance of countries that have implemented the OECD Convention.[9]

B. Criminal Law Convention on Corruption

On November 4, 1998, the Committee of Ministers of the Council of Europe adopted the Criminal Law Convention. There were twenty-one European signatories when it was opened for signature on January 27, 1999.[10] The Criminal Law Convention seeks to coordinate the criminalization of a wide range of corrupt practices, as well as harmonize national legislation

4. OECD Convention, *supra* note 1, art. 15, ¶ 1. These included Canada, Germany, Japan, the United Kingdom and the United States, with Canada being the last of the five to deposit its instrument of ratification on December 17, 1998.

5. The status of ratification and implementation is provided at the OECD's website (visited Mar. 4, 1999) <http://www.oecd.org//daf/cmis/bribery/bribimpe.htm>.

6. This is a narrower category of bribe recipients than under the Foreign Corrupt Practices Act (FCPA), 15 U.S.C.A. §§ 78dd-1(a)(2)-78dd-2(a)(2) (West 1998). *See summary of OECD Anti-Bribery Convention, Joint Statement of the U.S. Department of Commerce, U.S. Department of Justice and U.S. Department of State*, at 1 (Jan. 2, 1998) <http://www.com.ita.doc.gov/legal/oecdsum.html>.

7. *See id.*; *see also* Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD/IME/BR(97)17/FINAL, ¶ 10.

8. Revised Recommendation of the Council on Combating Bribery in International Business Transactions (Revised Recommendation), OECD/C(97)123/FINAL (May 23, 1997), *reprinted in* 36 I.L.M. 1016 (1997). Article VIII called for a "systematic follow-up to monitor and promote the full implementation" of the Revised Recommendation. Aside from setting a time table and reaffirming the need of member countries to criminalize the bribery of foreign public officials,

9. For a more detailed description of the review process see the OECD's website (visited Mar. 4, 1999) <http://www.oecd.org//daf/cmis/bribery/bribimpe.htm>.

10. These countries included Albania, Bulgaria, Cyprus, Denmark, Finland, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Russia, Slovakia, Sweden, Ukraine, the United Kingdom, and Georgia.

and improve international cooperation to facilitate the prosecution of those who offer or accept bribes.

Any comprehensive analysis of the Criminal Law Convention must await a careful review of the commentaries associated with its negotiation.[11] But, in general terms, the payment of bribes to foreign officials is among the prohibitions of the Criminal Law Convention.[12] Like the OECD Convention, bribes to officials of international organizations are also prohibited,[13] and transnational bribery is to be made a predicate offense for purposes of money laundering.[14] But the Criminal Law Convention differs quite dramatically in other ways from the OECD Convention.

The OECD Convention is a legal regime carefully designed to deter a specific type of conduct. Each of the signatories agreed to a common set of elements whereby the basic thrust of the OECD Convention cannot be circumvented through declarations or reservations. Provisions in the Criminal Law Convention could have this effect.[15] In this regard, there is similarity with the Inter-American Convention where there is a proviso for signatories to forego implementation of the transnational bribery and unjust enrichment provisions where either or both would violate their constitutions and the fundamental principles of their legal systems.[16]

The Criminal Law Convention more closely resembles the Inter-American Convention than the OECD Convention. Unlike the OECD Convention, it is not limited to bribery in the conduct of transnational business, and it focuses on both demand and supply-side issues. Unlike the OECD and Inter-American Conventions, it also extends to commercial bribery and to the falsification of records. This is not unlike U.S. law where the Travel Act incorporates state commercial bribery statutes,[17] and where the falsification of records to conceal bribery is addressed in the record-keeping provisions of the Foreign Corrupt Practices Act (FCPA).[18]

II. Domestic Developments

The FCPA took on renewed visibility in 1998. Aside from being the first changes in over ten years, the amendments to the FCPA were the most significant to date. They were accompanied by a series of investigations becoming public in the form of formal charges brought by the Justice Department.

A. New Amendments to the Foreign Corrupt Practices Act

The United States was a signatory and one of the key moving forces behind the adoption of the OECD Convention. In May of 1998, the OECD Convention was transmitted to the

11. At a meeting of the Section of International Law and Practice's Task Force on International Standards for Corrupt Practices on February 4, 1999, a U.S. official reported that the commentaries to the Criminal Law Convention provide insight that would be helpful to understanding the resolution of a number of critical issues by the negotiators.

12. Criminal Law Convention, *supra* note 1, art. 5.

13. *See id.* art. 9. It also extends to international parliamentary organizations and international courts. Depending upon how an international organization is defined under a signatory's domestic law under the OECD Convention, the Criminal Law Convention is likely to have a broader application.

14. *See id.* art. 13.

15. For example, signatories are allowed to declare that bribery of foreign officials is prohibited "only to the extent that the public official or judge acts or refrains from acting in breach of his duties." Criminal Law Convention, *supra* note 1, art. 36. Reservations are also permitted for the bribery of foreign public assemblies. *See id.* art. 37, ¶ 1.

16. Inter-American Convention, *supra* note 2, art. VIII—IX.

17. 18 U.S.C.A. § 1952 (West 1998). Most, but not all, states have commercial bribery statutes.

18. 15 U.S.C.A. § 78m(b)(2)(A) (West 1998).

U.S. Senate for advice and consent. It was ratified on July 31, 1998.[19] Adoption by the U.S. Congress of implementing legislation followed which, through amendments to the FCPA, brought U.S. law into conformance with the terms of the OECD Convention. These amendments were signed into law on November 12, 1998.

1. *Expansion of Prohibited Acts*

The FCPA previously criminalized payments made to a foreign public official "in obtaining or retaining business for or with, or directing business to, any person."[20] Consistent with the language of the OECD Convention, the amendments expanded the FCPA's scope to include payments made to public officials for the purpose of "securing any improper advantage."[21] The FCPA will now apply not only to improper payments made to obtain the award of a contract, but also to payments made to obtain benefits unrelated to the underlying transaction. But despite this apparent expansion of the law, this change effectively codifies existing policy and case law followed by U.S. authorities in enforcing the FCPA.

2. *Definition of Foreign Public Official*

Officials of international organizations are included within the definition of a foreign public official in the OECD Convention. As a result, the FCPA has been expanded to include any official or employee of a public international organization,[22] or any person acting on behalf of a public international organization.[23]

3. *Scope and Jurisdiction*

The OECD Convention prohibits illicit payments made by "any person" and recognizes the application of both the territorial and nationality principles of jurisdiction. Each party is required to establish jurisdiction over bribery of a foreign public official when the offense is committed in whole or in part in its territory.[24] Where a party applies the nationality principle of jurisdiction to offenses committed abroad by its nationals, it must also do so with respect to the bribery of a foreign public official.[25]

In contrast, the FCPA previously applied to "issuers" and "domestic concerns."[26] Through

19. *See* 144 CONG. REC. S9668-01 (daily ed., July 31, 1998). The ratification was subject to only one understanding which limits the provisions on extradition to only countries in which the United States has a bilateral extradition treaty in force. *Id.* And in those instances, the bilateral treaty will serve as the legal basis for extradition. There were also provisos calling for annual reports over five years as to the status of implementation and enforcement by other signatories as well as the status of efforts to limit the tax deductibility of bribes and of future negotiations to expand the definition of "foreign public official." *Id.*

20. 15 U.S.C.A. §§ 78dd-1(a)(1), 78dd-2(a)(1) (West 1998).

21. *See* International Anti-Bribery Act of 1998, H.R. Rep. No. 105-802, pt. 3, at 8 (1998) [hereinafter International Anti-Bribery Act].

22. The public international organizations covered by the FCPA are those organizations designated by Executive Order pursuant to the International Organizations Immunities Act, 22 U.S.C.A. § 288 (West 1998). It includes such organizations as the Organization of American States, the European Space Agency, and the Hong Kong Economic and Trade Offices.

23. *See* International Anti-Bribery Act, *supra* note 21, at 9.

24. *See* OECD Convention, *supra* note 1, art. 4, ¶ 1.

25. *See id.* ¶ 2.

26. The term "issuer" refers to a corporation which has a class of securities registered under the Securities Exchange Act of 1934 or is required to file reports under the Exchange Act. The term "domestic concern" means any U.S. citizen, national or resident, and any legal entity which has its principal place of business in the United States or is incorporated in the United States. This includes any officer, director, employee or agent thereof, or any stockholder acting on behalf of such entities.

the requirement that "an instrumentality of interstate commerce" be used in furtherance of a bribe to a foreign public official, minimal territorial nexus to the United States was necessary in order for there to be jurisdiction.[27] But in practical effect, the scope of the FCPA is limited to U.S. companies and to U.S. citizens, nationals, and residents.[28] It generally did not apply to foreign nationals or to foreign corporations and their foreign national employees,[29] even if they committed an act prohibited by the FCPA within U.S. territory.

Under the amendments, the scope of the FCPA is expanded to cover foreign natural and legal persons that commit any act in furtherance of the bribery of a foreign public official "while in the territory of the United States." This conforms the FCPA to the OECD Convention requirement that "any person" who commits all or a part of the prohibited conduct within the territory of a party should be subject to prosecution by that party.[30]

The new amendments expand the jurisdictional basis for prosecution of U.S. companies and U.S. nationals under the FCPA. It applies the nationality principle of jurisdiction to prohibited payments made by U.S. nationals or U.S. companies that take place wholly outside of the United States, regardless of whether an "instrumentality of interstate commerce" is used in furtherance of the prohibited conduct.[31] With the prior territorial nexus requirement being minimal, this does not represent a significant change.

This change also mirrors the likely implementation of the OECD Convention in civil law countries, which tends to use nationality jurisdiction. Foreign subsidiaries of U.S. companies have not been covered by the FCPA unless they qualified as issuers. Under the proposed amendments, they will now be covered to the extent that they act improperly within U.S. territory.

4. *Sanctions*

Under the FCPA, foreign national employees and agents of U.S. companies who used an instrumentality of interstate commerce in furtherance of a prohibited payment to a foreign public official were subject to civil rather than criminal penalties.[32] The amendment to the

27. *See* 15 U.S.C.A. §§ 78dd-1(a), 78dd-2(a) (West 1998). The term "interstate commerce" covers trade, commerce, transportation, or communication among the states or between any foreign country and any state. This would include a telephone call or the transnational use of computers, like e-mail, made in furtherance of payment or offer to pay to obtain or retain business.

28. The FCPA did apply to foreign nationals who were employees of U.S. companies or foreign nationals acting as agents for and on behalf of a U.S. company. 15 U.S.C.A. §§ 78dd-1(a), 78dd-2(a) (West 1998).

29. Foreign corporations that are "issuers" (i.e., that have ADRs listed on the New York Stock Exchange) are also subject to the FCPA. Nonetheless, they are less likely to meet the jurisdictional requirement under the FCPA that there be a use of "an instrumentality of interstate commerce." Yet regardless of whether an instrumentality of interstate commerce is involved, such entities are subject to the record-keeping requirements of the FCPA. *See, e.g., Montedison, S.p.A.*, SEC Litigation Release No. 15164 (Nov. 21, 1996).

30. OECD Convention, *supra* note 1, art. 4, ¶ 1.

31. While the United States has traditionally followed the territorial principle in the application of its criminal laws, there is precedent for the application of the nationality principle of jurisdiction under U.S. law. *See, e.g.*, the Economic Espionage Act of 1996, 18 U.S.C.A. § 1831-1839 (West 1998) (the statute applies to conduct outside the United States if the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States); Monetary Transactions Involving Criminally Derived Products, 18 U.S.C.A. § 1956(f) (West 1998). ("There is extraterritorial jurisdiction over the conduct prohibited . . . if—(1) the conduct is by a United States citizen . . .") and § 1957(d) ("the offense . . . takes place outside the United States . . . but the defendant is a United States person . . ."); *see also* Foreign Assets Control Regulations, 31 C.F.R. pt. 500 (1998).

32. *See* International Anti-Bribery Act, *supra* note 21, Section-by-Section Analysis, § 4 at 5. Previously, officers and directors of U.S. companies were subject to criminal penalties under the FCPA. 15 U.S.C.A. § 78dd-2(g) (West 1998).

penalty section of the FCPA ensures that foreign nationals who are employees or agents of U.S. companies will be subject to civil and criminal penalties, and thereby accorded the same treatment as U.S. citizens who are employees or agents of U.S. companies.[33]

5. Implications for U.S. Companies

The OECD Convention closely resembles the FCPA. Yet it is generally perceived as being more narrow in scope. For example, payments to political parties are generally not covered under the OECD Convention. As a result, for companies that have exercised care to ensure that they are in compliance with the FCPA, neither the new amendments nor the OECD Convention should pose a basis for concern. The new amendments essentially follow current practice in terms of U.S. enforcement activity involving the FCPA.

For companies that have not exercised care in ensuring compliance with the FCPA, the new amendments and particularly the OECD Convention could have serious implications. The mutual legal assistance provisions of the OECD Convention will enable U.S. authorities to acquire evidence that typically was not obtainable in the past. For this reason, regardless of the degree to which OECD members actively enforce the OECD Convention, officials with the Department of Justice and Securities and Exchange Commission anticipate an increase in enforcement activity.

B. Enforcement Actions

Although no new enforcement actions were reported by the Securities and Exchange Commission involving the FCPA's anti-bribery provisions, a number of new cases were brought by the Justice Department in 1998. Except for one defendant who remains subject to a pending extradition request, all of these cases were concluded with the entry of a plea or a conviction.

1. *United States v. Saybolt, Inc.*

An investigation by the Environmental Protection Agency of allegations of false certifications of qualitative tests of reformulated gasoline in violation of the Clean Air Act uncovered payments to Panamanian officials. This involved two Delaware corporations, Saybolt North America, Inc. (Saybolt North America), and its wholly-owned subsidiary, Saybolt, Inc. (Saybolt), and two of their officers, Frerik Pluimers, President and Chief Executive Officer of the former and Chairman of the latter, and David Mead, President and Chief Executive Officer of Saybolt.

A payment of $50,000 was made through Saybolt de Panama to Panamanian officials to secure a commercially favorable location and a reduced rental tax rate for its operations in Panama.[34] Mr. Pluimers and Mr. Mead were present when the payment was discussed at a meeting of the Board of Directors of Saybolt North America at Saybolt's headquarters in New Jersey.[35] Mr. Pluimers is alleged to have caused the $50,000 to be wired from the Netherlands to Citibank in New York for Saybolt de Panama's account.[36] In various ways, Mr. Mead acted as an intermediary to assist Saybolt de Panama in securing the funds for the payment.[37]

33. *See* International Anti-Bribery Act, *supra* note 21, § 4.

34. United States v. Saybolt, Inc., No. 98 CR 10266 WGY (D.Mass. Aug. 18, 1998). Saybolt de Panama was incorporated under Panama law and owned by Saybolt International B.V. (Saybolt International), a holding company incorporated in the Netherlands. Mr. Pluimers was President and Chief Executive Officer of Saybolt International.

35. *See id.* ¶ 22.

36. *See id.* ¶ 30.

37. *See id.* ¶¶ 17-22, 26-28.

On August 18, 1998, Saybolt North America and Saybolt entered pleas to an information charging each with conspiracy to violate the FCPA and with violating the anti-bribery provisions of the FCPA.[38] A fine of $1.5 million was imposed.[39] Mr. Mead and Mr. Pluimers were indicted on similar charges. However, a third count involving a substantive charge of violating the Travel Act was added.[40] Mr. Mead was later tried and convicted on all three counts. Mr. Pluimers has yet to be tried. He is a citizen of the Netherlands where he continues to reside. An extradition request against him remains pending there.

Of particular note are the jurisdictional bases for bringing charges against both men. Neither are U.S. citizens. His positions with Saybolt North America, Saybolt and Saybolt Western Hemisphere made Mr. Mead an officer, director, and agent of a "domestic concern" and therefore subject to the provisions of the FCPA.[41] But Mr. Mead was also a "domestic concern" under the terms of other provisions of the FCPA.[42] Though Mr. Pluimers was not a resident alien, he was an officer, director, and agent of a "domestic concern" under the terms of the FCPA and therefore subject to its terms as an officer and director of Saybolt North America and Saybolt.[43]

2. *United States v. Tannenbaum*

Secret payments were offered to an undercover agent posing as an Argentine procurement officer in *United States v. Tannenbaum*.[44] The payments were made to induce the procurement officer to take steps to ensure that the government of Argentina would purchase his garbage incinerators. The investigation ultimately led to the entry of a guilty plea by Mr. Tannenbaum for conspiracy to violate the FCPA.

3. *United States v. Crites*

A similar situation was presented in *United States v. Crites*.[45] Through his company, Control Systems Specialist, Inc., the defendant sought to purchase and recondition surplus military equipment for resale to Brazil. The sale was to be made to a Brazilian liaison officer located at Wright Patterson Air Force Base. He was authorized to make purchases on behalf of the Brazilian Air Force.[46] In exchange for a consulting fee, the Brazilian liaison officer agreed to approve the purchases on behalf of Brazil.

At the same time, a U.S. civilian representing the U.S. Air Force agreed to provide information on sources of surplus equipment in exchange for the promise for the payment of money. The investigation that followed led to pleas being entered to a three-count information by Control Systems Specialist and its president, Darrold Richard Crites, for conspiracy to violate the FCPA and to bribe a U.S. official for violating the FCPA and bribing a public official.[47]

38. 15 U.S.C.A. § 78dd-2(a)(3) (West 1998). Saybolt also later pled guilty to criminal charges of conspiracy to violate the Clean Air Act by submitting false reports and wire fraud. It agreed to pay a fine of $3.4 million.

39. *See* Saybolt, No. 98 CR 10266 WGY.

40. *See* 18 U.S.C.A. § 1952(a)(3)(A) (West 1998).

41. 15 U.S.C.A. § 78dd-2(h)(1)(B) (West 1998). United States v. Mead, Indictment at ¶ 4 (D.N.J. 1998).

42. 15 U.S.C.A. § 78dd-2(h)(1)(A) (West 1998). Mead, Indictment at ¶ 5.

43. 15 U.S.C.A. § 78dd-2(h)(1)(B) (West 1998). Mead, Indictment at ¶ 6.

44. United States v. Tannenbaum, Information (S.D.N.Y. 1998). The government of Argentina gave prior approval to the Department of Justice to have an undercover agent act as an Argentine official.

45. United States v. Control Systems Specialist, Inc., No. CR-3-98-073 (S.D. Ohio Aug. 19, 1998).

46. He was a "foreign official" under the terms of 15 U.S.C.A. § 78dd-2(h)(2) (West 1998).

47. 18 U.S.C.A. § 201(c)(1)(A) (West 1998).

C. Department of Justice Opinions

Through its opinion procedure, two new opinions were issued by the Department of Justice in 1998. For the first time, the formal procedure did not lead to a conditional approval of a proposed course of action.

1. *FCPA Opinion Procedure Release 98-01*[48]

A local Nigerian contractor was retained to help resolve the situation where a U.S. firm had been found liable for environmental damage caused by its subsidiary. The contractor had experience in the removal of environmental contaminants and was recommended by Nigerian environmental officials. He asked that the fine be paid through him and that his fee for the removal of the contaminants include "community compensation and modalities for officials of the Nigerian FEPA and the Nigerian Ports Authority." In a departure from its normal practice, the Justice Department concluded that an investigation would be commenced if the U.S. firm made the payments to the contractor.

2. *FCPA Opinion Procedure Release 98-02*[49]

A wholly owned subsidiary of a U.S. company submitted a bid to a foreign government-owned entity to sell and service military equipment. In connection with its bid, the U.S. company intended to enter into several agreements with a privately held company in the same foreign country. The U.S. company had acquired an entity that had an international representative agreement with the privately held company calling for consulting services to be performed. Neither the privately held company's nor the entity's owners, officers, employees or agents were foreign officials.[50]

The international representative agreement with the entity was later terminated after it was determined to be invalid under local law. A lump sum payment was paid to the entity after assurances were received that no payment would be made to any governmental official.[51] The U.S. company thereupon sought to enter into an international representative agreement with the privately held company in connection with the sale of products and services. It also sought to enter into a teaming agreement with the privately held company to compete for government contracts. There would be a monthly retainer and reimbursement for extraordinary expenses.

A new due diligence investigation found there to be no improper conduct nor any ties with government officials associated with the agreements. An opinion obtained from a law firm in the foreign country found the agreements to be in compliance with local law. The privately held company executed a certification, indicating that no one associated with it was a government official and that no government official would directly or indirectly benefit from its entering

48. FCPA Op. Procedure Release 98-01, U.S. D.O.J. 98-01 (Feb. 23, 1998).

49. FCPA Op. Procedure Release 98-02, U.S. D.O.J. 98-01 (Aug. 5, 1998).

50. *See id.* ¶¶ 1-2.

51. As more fully described in the opinion release, the U.S. company undertook extensive measures throughout the entire process to secure representations and certifications, to undertake further due diligence, and to obtain independent evaluations and advice. This extended to the termination of the international representation agreement and to the steps being taken as a prelude to entering into the agreements with the privately held company. *See id.*

into the arrangement.[52] The Department of Justice indicated that it did not intend to take any enforcement action with respect to the agreements with the privately held company.[53]

III. Conclusion

Developments in 1998 represented a year of transition. Efforts to deter corrupt practices in the conduct of international business finally began to make the actual transition from "soft" to "hard" law. What remains is determining whether the momentum will continue and whether these first definitive steps will lead to broader implementation and active enforcement of the legal regimes that have been and continue to be developed in various fora. As with the U.S. experience, the degree to which heightened sensitivity within the legal community and among major corporations translates into definitive steps being taken to cease past practices will depend in large part upon active enforcement of these new legal regimes.

52. The privately held company was under obligation to disclose to the U.S. company if circumstances developed to make any of the certifications in whole or in part inaccurate. *See id.* ¶ 9.

53. The U.S. company's obligations under the agreements were "conditioned upon a favorable response from the Department of Justice under the FCPA Opinion Procedure." *See id.*