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How to Avoid Inadvertently Violating the Foreign Corrupt Business Practices Act Abroad

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I. Introduction

The Foreign Corrupt Practices Act (hereafter, FCPA) was enacted to help discourage U.S. businesses and individuals from committing bribery transactions abroad, typically in the form of paying foreign officials for specific business promises or acts. The Securities and Exchange Commission (hereafter, SEC) actively pursues U.S. businesses and individuals for making promises or committing acts that may otherwise be a regular part of the foreign host country's business culture but may be deemed to have violated the FCPA. Indeed, actions that run afoul of the FCPA may often have little U.S. connection other than when a U.S.-owned business or individual makes an illicit payment. This article reviews the enforcement of the FCPA by the SEC and DOJ, along with the typical types of penalties and expenses for companies that run afoul of the FCPA from recently litigated court decisions (Brodsky, et al., 2008).

On December 19, 1977, the United States enacted the Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1, et seq.) to prohibit U.S. individuals and businesses from bribing foreign officials, including entities, for personal or business gain. Any attempt to influence—a promise to pay money, gifts, or any other assets of value by mail or other means as a basis for gaining political power or contract—comes within the purview of the FCPA.[1] Transnational bribery by multinational corporate entities to foreign officials also falls within the scope of the FCPA. This article reviews essential provisions of the FCPA for informing financial professionals involved in the foreign commerce of hidden pitfalls that may lead to a violation of the FCPA. The remainder of the article is organized as follows: (2) history and revenue collections of the FCPA, (3) U.S. anti-corruption and bribery laws, (4) interstate analysis of the FCPA, (5) inter-country differences in ascribing criminal responsibility, (6) corporations prosecuted for illicit deals and associated laws, (7) FCPA investigation costs, and (8) conclusions.

II. History and Revenue Collections

Despite U.S. efforts to address corruption targeted by the FCPA for more than 43 years, corruption continues to be an ongoing problem with many countries regarding international commerce. In the past two years, several U.S. states have enacted laws like the Foreign Corrupt Practices Act of 1977 to prohibit corrupt payments to foreign officials. Klaw (2015) opines that to a considerable extent, the authorities of state and foreign officials appear to have overlooked or are unwilling to investigate corrupt officials who are soliciting or demanding bribes. Under the FCPA, making payments or promises to pay or to approve payment in cash or to provide any item of significant value to affect any demonstration or selection of an unknown institution within the scope of its functions or to restrict certain institutions are prohibited.

The primary goal of FCPA is to confront the problem of international corruption and bribery. The two primary weapons in this battle are 1) the anti-bribery provisions that are enforced by the Department of Justice (DOJ) and 2) accounting provisions that are enforced by the SEC. Under the books and records provision, issuers of U.S. securities must make and keep books, records, and accounts that accurately reflect the issuer's transactions and disposition of assets. Under the internal controls provision, issuers must devise and maintain a system of internal controls to assure management's authority and responsibility of the firm's assets. In a situation where all the elements of the anti-bribery provision cannot be proven, often the companies are still liable under the accounting provisions (Crumbley and Fenton, 2021). Practical ways to keep up with FCPA action are following the FCPA blog (fcpablog.com), FCPA Professor (fcpaprofessor.com),

[1] 15 U.S.C. § 78dd-1, et seq.

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gibsondunn.com, fcpa.stanford.edu, and fcpatracker.com. Also, the FCPA Counsel Tracker (globalinvestigationsreview.com) provides information about who is getting FCPA work.

The FCPA's approach to prosecuting bribery is based on the goal of achieving efficient and ethical markets. Early criticisms were primarily concerned with the corrupt and potentially corrupt areas of competition in the U. S. because of the strict but questionable application of the anti-bribery laws at the time (Salbu, 2018). Later, critics focused on the flaws detected in FCPA laws (Salbu, 2018; Liu, 2015). Liu (2015) holds that because world politics is "state-centric in the absence of substantive supranational approach, the enforcement of laws (such as the FCPA) depends on the enactment and enforcement of the laws of individual countries."

Revenue Collections

In 2020, a total of $2.78 billion was collected in fines and penalties by U.S. regulators in addition to billions collected by foreign regulators (Gibson, Dunn, and Critcher, 2020). The U.S. DOJ and SEC, including 32 FCPA enforcement agencies, worked collaboratively in prosecuting illicit payments by U.S. persons and businesses. U.S. collections from fines, disgorgements, restitution, and penalties are used to assist general government funds and regulation enforcement divisions, along with whistleblowers, who are entitled to between 10 and 30 percent of reported payment amounts, and crime victims (National Whistleblower Center, 2018). Disgorgement requires a legal payment of ill-gotten gains.

In 2016, the GAO released its report on fines, penalties, and forfeitures for violations of financial crimes. The report discussed the amount collected by the federal government for the penalties, liabilities, and forfeitures for violations from January 2009 through December 2015 (GAO, 2016). This report also discussed the process for collecting these funds and the purpose for using or disbursing. Those interviewed included financial officials from the Department of the Treasury (including the Financial Crimes Enforcement Network and the Office of Foreign Assets Control), SEC, DOJ, and the federal banking regulators. These agencies are jointly responsible for enforcing the FCPA and have authority over issuers, their officers, directors, employees, stockholders, and agents acting on behalf of the issuer for violations, as well as entities that violate the FCPA.

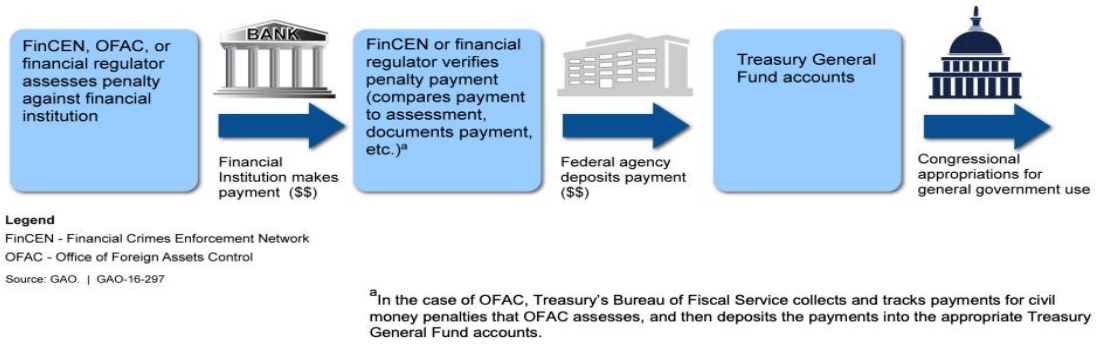
The DOJ is guided by the Principles of Federal Prosecution, for individuals, and the Principles of Federal Prosecution of Business Organizations, for companies when deciding whether to open an investigation and bring charges forward. These principles help DOJ officials give an in-depth assessment of damages and the risk of harm to the public or shareholders. As for the SEC, there is an Enforcement Manual and guiding principles to assist in the determination of opening a case and if civil charges are merited. Staff must consider several factors, including: (1) the statutes or rules potentially violated; (2) the egregiousness of the potential violation; the potential magnitude of the violation; (3) whether the potentially harmed group is particularly vulnerable or at risk; (4) whether the conduct is ongoing; (5) whether the conduct can be investigated efficiently and within the statute of limitations period; and (6) whether other authorities, including federal or state agencies or regulators, might be better suited to investigate the conduct (Criminal Division of the U.S. DOJ and the Enforcement Division of the U.S. SEC, 2012).

The potential consequences for violation of the FCPA are determined by the severity of the crime. For each violation of the anti-bribery provisions, the FCPA provides that violators are subject to a fine of up to $2 million. Individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to $250,000 and imprisonment for up to five years. For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to $25 million. Individuals are subject to a fine of up to $5 million and imprisonment for up to 20 years (DOJ and SEC, 2020). A criminal case conducted by the DOJ may be resolved without a trial in the case of a negotiated resolution. Such resolutions may include a deferred prosecution, plea, or nonprosecution agreement (Benowitz, 2019).

Collections for violations of the FCPA contribute to supporting the government, law enforcement, and victim payments. Before disbursement, the fines, penalties, and forfeitures are collected and processed by the Treasury and Justice Departments. The use of these funds is governed by statute, by which the Treasury and the DOJ are authorized to utilize the revenue from these funds to pay for forfeiture-related expenses. As for agency seizures of assets, forfeitures are generally deposited into two accounts—either the DOJ's Asset Forfeiture Fund (AFF) or the Treasury's Treasury Forfeiture Fund (TFF). The Treasury also manages funds deposited into accounts in the Treasury's General Fund used for support of the federal government. The Financial Crimes Enforcement Network and financial regulators deposit collections of penalties

assessed against financial institutions—including the covered violations—into the Treasury's General Fund accounts (see Figure 1). All collections that are not defined by law for another performance or a particular function or included in the president's budget as either governmental (budget) or offsetting are held in Treasury General Fund receiving accounts (GAO, 2016). Figure 1 below depicts the process for collecting and depositing penalties.

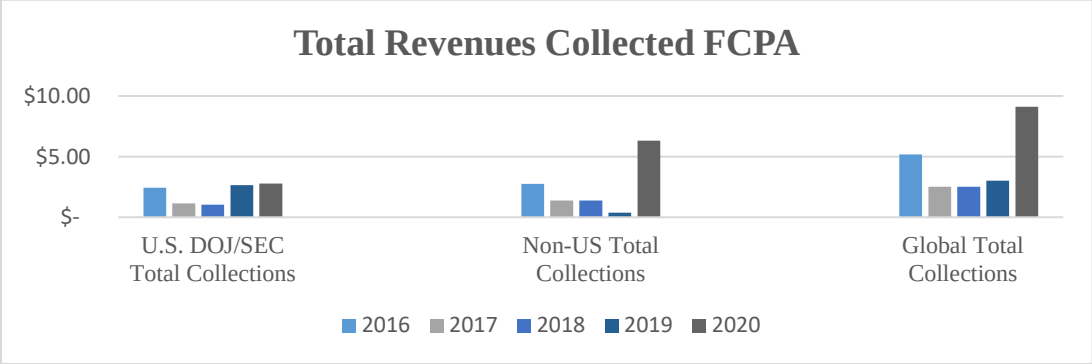
Figure 1: Process for Collecting and Depositing Penalty Payments



A GAO review indicates that "the SEC keeps records of each check, wire transfer, or online payment it receives, along with a record of the assessed amount against the financial institution, the remaining balance, and the reasons for the remaining balance, among other details related to the penalty." The SEC deposited all funds into a Treasury General Fund receipt account for collections reviewed from January 2009 to December 2015 for Bank Secrecy Act (BSA) and FCPA violations. During January 2009 through December 2015, the SEC collected approximately $27 million in penalties and disgorgements from two financial institutions for FCPA violations (Criminal Division of the U.S. DOJ and the Enforcement Division of the U.S. SEC, 2012). The SEC levied $10.3 million in penalties, $13.6 million in disgorgements, and $3.3 million in interest combined for the FCPA violations. These fines were imposed for insufficient internal controls and other FCPA books and records violations. SEC officials stated that they had not levied more penalties against financial institutions for FCPA violations than they had against different types of institutions might be because, in part, to financial institutions are subject to greater regulatory oversight than other industries (GAO, 2016).

The U.S. continues to lead the world in anti-corruption enforcement. In 2020, regulators and prosecutors from Brazil, France, Hong Kong, Singapore, and the UK imposed penalties for approximately $6.31 billion and $9.10 billion worldwide for corruption penalties (FCPA, 2020). Meanwhile, the U.S. DOJ and the SEC imposed roughly $2.78 billion (see Figure 2 below). The data identified in Figure 2 underscore the trend of increasing world anti-corruption enforcement and coordination by U.S. regulators and their foreign counterparts.

Figure 2: Total Fines and Penalties Collected by FCPA (in Billions)



[2]Note: Adopted from Walther et al. (2021). FCPA 2020 year in review [White paper]. Jones Day. 1–20. https://www.jonesday.com/en/insights/2021/01/fcpa-2020-year-in-review

III. U.S. Anti-corruption and Bribery Laws

[2] **United States DOJ/SEC** collections in billions: 2016, $2.43; 2017, $1.13; 2018, $1.03; 2019, $2.65; 2020, $2.78. **Non-U.S**. collections in billions: 2016, $2.74; 2017, $1.39; 2018, $1.91; 2019, $0.37; 2020, $6.31. **Global Total** collections in billions: 2016, $5.17; 2017, $2.52; 2018, $2.94; 2019, $3.02; 2020, $9.01.

Allocation Approach

Allocating blame to the victims of bribery by extending criminal liability to citizens and noncitizens where an individual does not have actual knowledge that a bribe was paid is a questionable approach. The FCPA's intelligence level is notable in this regard in that it extends beyond basic knowledge to include the principle of "deception." As a result, a business cannot escape responsibility under the FCPA. By failing to implement anti-corruption enforcement policies or ignoring red flags, both government officials and businesses are considered to have violated anti-bribery laws. Even simply doing business in a country considered to have a high risk of corruption is a risky proposition. This broad constructive knowledge norm, combined with the ban on indirect payments, means that an organization must have an abundance of constructive knowledge (Williams and Smith, 2016). Being unaware of improper payments may not be enough to shield an individual or a business from the actions of partners or associates (Samanta and Sanyal, 2016). Third-party payments are the basis for the vast majority of FCPA compliance proceedings.

A wide variety of enforcement actions have been primarily based on the conduct of a company's distributors, even though the arm's-length nature of the distributor relationship (like that of franchisor and franchisee) has historically been seen as a barrier to liability. For instance, in enforcement against Alcoa for $384 million, the U.S. government held Alcoa Inc. liable for payments made by its subsidiaries even though Alcoa neither knew of nor participated in the payments. In its decision, the SEC concluded that Alcoa’s subsidiaries had been the agents of the parent company and were based on elements so vague as to cover almost all parent-subsidiary relationships (Williams and Smith, 2016).

States that use the allocation approach generally do not give equal monetary treatment to residents and nonresidents. In an ideal world, any invested individual would treat residents and nonresidents equally. The Regulatory Procedure Rules of states do not disclose the privileges of nonresidents in the court system. Yet, they suggest that those unfamiliar residents take full benefits of their rights and liabilities similarly to Russian residents and elements aside from cases given by Managerial Procedure Rules. The government of the Russian Federation could set retaliatory cutoff points for residents of states that concede limits for Russian residents' rights in the court system. Along these lines, citizens with political and financial influence are not restricted in applying to a court yet could be limited to law changes. Subjects ought to qualify the measures of being authoritative and having lawful standing. In the U.S., the federal government looks at the expected risk that constantly follows the criminal indictments. These indictments are driven by and are dependent on distortions under the protection laws and penetration of trustee obligations by leaders of business entities.

Methods Used to Avoid Domestic and International FCPA Violations

Private-sector entities utilize several strategies to avoid FCPA violations. Generally, the approach involves the dual pathway of preventative training and proactive monitoring. The responsibility is within the purview of the board of directors for corporate businesses and similar personnel of noncorporate businesses. Companies typically employ the following to prevent FCPA violations (Huskins, 2014).

- **Monitoring:** Assuming that some workplaces are too small to even think about executing internal controls may lead to an FCPA infringement. All foreign auxiliaries of an organization ought to work in a thoroughly controlled climate for accuracy by a high level of individual responsibility and permeability into financial exchanges. Furthermore, occasional coordinated reviews of FCPA issues are advisable. Through these reviews, warning signals can be discovered, such as abnormal credit terms or uncommon installments of payments due to holding organizations.
- **Continuous training:** An organization's FCPA strategy, whether an independent approach or contained inside an organization's code of business directives, should include commonsense and explicit guidance on workers' expectations. All organizations must continue to maintain high moral standards and implement training continuously. Representatives need clear direction on how to manage specific FCPA-related dilemmas. Organizations should give different approaches to the employees working together in areas where neighborhood business standards do not sufficiently provide consistency with the FCPA.

IV. Interstate Analysis

Interstate Comparison

U.S. states may be liable under federal law for sales of information such as financial records, recordings, photos, or other materials used for extortion or payoffs by unsuspecting opportunists. States have responsibility for investors' mediation and interstate financial systems. One such responsibility is to provide political security under the FCPA involving public officials (Klaw, 2015). States With Anti-Corruption Measures for Public authorities [SWAMP] Index examines the laws of the 50 states and the District of Columbia regarding the foundation and extent of moral office practices for public officials.

According to Shruti (2018), "the overall objective of the SWAMP Index identified in Table 1 is to determine if each state's laws are transparent in their fight against bribes and corruption regarding investigations, the imposition of sanctions, fines, and related measures." The laws and guidelines regarding adherence to morals and straightforwardness in governance for administrative and governmental units are assessed based on index scores ranging from 0 to 100 percent, with 100 percent being a perfect score (Shruti, 2018). Although North Dakota's score is 0 in the most recent index scores, the state's Independent Ethics Commission was on the November 2018 ballot and was approved by North Dakota voters. State independent ethics commissions run investigations, impose fines, hold public hearings, and impose sanctions for bribes and corruption. Most states have laws and regulations to prosecute persons or organizations for bribery and other similar behavior. However, violations of the anti-corruption practices are not tied to federal, international, or global standards.

V. Intercountry Differences in Ascribing Criminal Responsibility

Bribe-Paying and Bribe-Accepting Officials

An entity or official's willingness to offer or accept a payoff or bribe often depends on the payer's circumstances and potential benefits for the recipient of the bribe or payoff. For instance, a public official might refuse to fulfill promised acts or demand additional payments before delivering on pledged actions. The payer of the bribe then cannot address nonperformance in a court of law because debasement contracts are not lawfully enforceable.

When the perceived likelihood of getting caught is low, public authorities often solicit or accept bribes. According to Fedderly (2021), "the New York City prosecutor's latest crackdown on bribery charges was against media giant Bloomberg LLP. Bloomberg's former director of global construction, Anthony Guzzone, was a large player in this $15-million project bribery and a bid-rigging scheme involving the firm's building located in mid-town Manhattan." Guzzone was charged with evading taxes on $1.45 million received from illegal payments that resulted in him receiving a 38 month prison sentence. The U.S. District Court ordered him, along with serving time, to pay restitution of $574,005 in unpaid taxes for the years 2010−17. Former executive Guzzone participated in "unnoticed" fake work orders, misappropriated unused subcontractor allowance funds, inflated subcontractor bids, and the changing of orders (Miller and Hoffman, 2018).

Organization for Economic Co-operation and Development (OCED)

The OECD had its beginning in 1948, as a European organization to help administer the Marshall Plan. In 1997, the U.S. and 31 other countries signed the OECD Convention on Combating Bribery of Foreign Public Officials. They use peer pressure to implement and improve policies and set standards adopted by member countries (Crumbley and Fenton, Jr., 2021).

The Organization for Economic Co-operation and Development (OECD) has encountered political challenges for its anti-bribery conventions and collaborations with countries, including the U.S. In recent years, the OECD has made a concerted effort to align its investigative and mitigation efforts with the FCPA's approach. Bribery cases litigated in U.S. courts thoroughly review claims to ensure continuous improvement to achieve trust in elected officials.

During the OECD Convention in 2016, the convention participants strengthened their commitment for member countries to root out and prosecute bribery and corruption. The formal accusation of Siemens AG in 2007, which is one of the most prominent global technology organizations in the world (located in Germany) known for worldwide payoffs, are prior investigations on how the OECD's model of examining corporate executives' business practices. Examiners tracked operations at Siemens AG, explored its practices, and found that the organization had been subsidized for quite an extended period. Siemens AG had made a total of $1.36 billion in payoffs to corrupt government authorities worldwide to acquire contracts that included the Unified Countries Oil-for-Food Program in Iraq, media transmission hardware in Nigeria and Bangladesh, and clinical gadgets in China, Russia, and Vietnam. Indicted in both the U. S. and Germany, Siemens AG paid $450 million in fines and $350 million in penalties to the U.S. As part of the organization's settlement with the Munich

Public Examiner's Office, the organization paid around $569 million in fines and penalties for paying out improper benefits and for its inability to regulate its officials and representatives (Samanta and Sanyal, 2016).

Regulation-centric Approach

The UK Secretary of State for Equity noted that the Payoff Act of 2010 implemented laws to discourage corruption. According to the Secretary of State, the Payoff Act is essential to England because the current enactment is out of date and ineffective. While it is imperative to expose and prosecute offenders, it is also necessary to deter repeat offenders. According to Koehler (2019), the FCPA repeat offenders demonstrate that FCPA compliance cannot be guaranteed in a business organization. Only steps can be taken to minimize the risk of violations.

Problem-centric Approach

The scientific and political literature of the first few years after the ratification of the FCPA by the OECD's 2011 Convention was focused on the achievements of legislation globally. The convention provisions are considered differently in various countries' legal systems because the OECD does not have legal authority. Instead of encouraging uniform laws among countries, the convention adopted a principle of "functional equivalence." This change was to assign the signatories' obligations to take measures whose "general legal effects," but not the literal provisions, meet the convention's requirements (Pieth, 2013).

Vl. Corporations Prosecuted for Illicit Deals and Associated Laws

In 2020, the DOJ and SEC brought enforcement actions against 12 companies and imposed penalties of $6.4 billion. Goldman Sachs Group (US) had to pay $3.3 billion, and Airbus Industries (Netherlands/France) had to pay $2.09 billion in 2020. As of October 2021, they rank, respectively, number one and two on the FCPA Blog's Top Ten lists.

Third on this same list is Petrobras, which paid $1.78 billion in fines in 2018. The FCPA Professor blog lists penalties of lower amounts for most companies but still lists Goldman Sachs number two at $1.66 billion and Airbus number one at $4 billion. Fcpa.stanford.edu ranks Odebrecht/Braskem number 1.

Goldman Sachs

The Goldman Sachs violation involved at least $1.6 billion of bribes. According to the DOJ, former senior employees of Goldman Sachs used a third-party intermediary to bribe high-ranking government officials in Malaysia and the Emirate of Abu Dhabi. Goldman signed a deferred prosecution agreement resulting in unofficial probation if they abide by certain conditions. DOJ imposed a $2.3 billion criminal penalty. The SEC also imposed a civil penalty of $400 million and $606.3 million disgorgement penalty. Disgorgement requires a legal payment of ill-gotten gains. In the UK, Goldman was fined $126 million for risk management failure, and Singapore imposed a penalty of $122 million and a required disgorgement penalty of $61 million. Hong Kong charged a local unit of Goldman $350 million. Under the DOJ's deferred prosecution agreement, the $2.3 billion criminal fine was reduced to $1.27 million, assuming Goldman paid the SEC, UK, Singapore, and Hong Kong (Harry Cassin, October 22, 2020).

Gunvor Group

While many businesses adhere to the FCPA rules, many large international companies often experience misconduct within their chain of command. Global companies worldwide have failed to establish laws strict enough to deter employees and senior management from participating in illicit bribery schemes. One such instance is that of the Gunvor Group, an international commodity-trading company headquartered in Geneva, Switzerland. The group has sales offices worldwide in Singapore, the Bahamas, and Dubai. Raymond Kohut, a 68-year-old Canadian citizen and former employee of the Swiss mining company Gunvor Group Ltd., pleaded guilty to orchestrating an eight-year-long bribery scheme. Kohut admitted to bribing an Ecuadorian government official of the state-owned oil company PetroEcuador with $22 million.

Airbus

According to H. Cassin (2020), after an in-depth investigation by a British whistleblower, the court required Airbus to pay $4 billion to resolve allegations of global business and bribery with French, British, and U.S. authorities. Airbus paid approximately $2.3 billion to Parquet National Financier (PNF) in France. In the UK, their Toulouse-based aerospace company signed a three-year deferred prosecution contract with the Serious Fraud Office and paid $1.09 billion to resolve the bribery allegations. According to the UK (DPA) agreement, Airbus agreed to return $649 million and pay a fine of $441

million. The Ministry of Justice also was paid a total of $582.4 million to resolve allegations of collusion under the FCPA and the International Trade in Arms Regulations (ITAR). Airbus paid $294.5 million to settle FCPA expenses and $232.7 million to settle I.T.A.R. expenses. Airbus also forfeited $55 million in bonds to the DOJ during the civil recovery process.[3]

Petrobras

In 2018, a Brazilian state-owned and state-controlled energy company, Petrobras, agreed to pay $853.2 million in penalties to resolve FCPA violations. This massive bribery and laundering scheme are known as "Operation Car Wash," centered around Petrobras executive Paulo Roberto Costa, director of refining and supply. On a pre-arranged rotating basis, Costa, Nestor Cerveró, and other Board of Directors overpaid various vendors for drilling rigs, office construction, exploration vessels, and refineries. These other businesses then put a share of the overpayments (around three to five percent) into secret slush funds. BODs used the diverted funds to give money to the politicians who appointed them and to political parties to keep their political parties in power. In January 2018, Petrobras settled a U.S. securities class action lawsuit for $2.95 billion (Crumbley and Murray, 2020).

Odebrecht and Braskem

Brazilian construction conglomerate Odebrecht and subsidiary petrochemical Braskem pled guilty in December 2016 and agreed to pay a penalty of at least $3.5 billion for spending hundreds of million dollars in bribes to government officials on three continents. Because of the financial difficulties of Odebrecht, the penalty was reduced. These two companies used a hidden Odebrecht Department that systemically spread the bribes around the world. The fully functioning department disguised the sources and disbursements of the bribe payments bypassing the funds through a series of shell companies. The U.S. received $94.8 million, with the remainder to Brazil and Switzerland.

On May 21, 2021, the DOJ unsealed an indictment of two Austrian citizens for their roles in the laundering scheme involving Odebrecht. The DOJ chose to pursue the two for money laundering rather than for FCPA violations. Odebrecht terminated 51 individuals and suspended 26 people for one-and-one-half years. The former CEO of Braskem was sentenced to 20 months in prison in October 2021.

Bombardier

A Russian employee of Bombardier in Sweden was accused of bribing a government official in Azerbaijan to obtain a contract for a new train signal system worth $340 million. Russian citizen Evgeny Pavlov worked for Bombardier Transportation in Sweden and was charged with bribery. Pavlov was first arrested by the Organized Crime and Corruption Investigation Project (OCCRP) in March 2013. The prosecutor said that several other participants of Bombardier in Sweden subsequently received a "suspicious transaction report." The OCCRP report stated that Bombardier Transportation was suspected of bribing unidentified Azerbaijani officials with millions of dollars through a shadow company registered in the UK. revealed Bombardier emails to the media; according to Bombardier, “We take these allegations very seriously as they assert conduct that does not reflect our values or the high standards, we set for ourselves, our employees and our partners” (Cassin, 2017).

In March 2013, the British intermediary was identified as Multiserv Overseas Ltd. Swedish anti-corruption prosecutor Thomas Forsberg told OCCRP that Multiserv Overseas did not have employees to work within the various facilities throughout the province adequately and was determined to be false. Bombardier is headquartered in Montreal, Canada, and produces aircraft and train equipment. In 2013, the Stockholm train department received an order worth $350 million to provide Azerbaijan with turnouts and signal interlocking devices. The copy of the contract obtained by the Swedish investigative reporter clearly stated, "Bombardier Sweden sold this equipment to Multiserv Overseas, who then sold the same equipment to Bombardier's Azerbaijani subsidiary at a high price." Shoe repair chain Multiserv in Africa made a profit of $85.8 million in transactions. According to OCCRP, “the funds were sent to an offshore account.” The equipment was shipped directly from Bombardier in Sweden to Azerbaijan instead of being shipped to Multiserv (Cassin, 2017).

VII. FCPA Investigation Costs

The Department of Justice and the Securities and Exchange Commission

[3] U.S. Department of Justice Docket no. 20-CR-00021.

An FCPA investigation is an inquiry conducted by the SEC, the DOJ, and/or unspecified "U.S. Authorities" into potential FCPA violations by a company or its affiliates, subsidiaries, or joint ventures. The DOJ and the SEC's FCPA investigations generate a significant amount of revenue every year for various uses that benefit different sectors throughout the U.S. government. However, these FCPA violations and misconduct investigations can be extremely costly and time-consuming for the involved entities, the DOJ, and the SEC. A single investigation often consists of three connected investigations: one by the company and two by the U.S. government. The average length of an FCPA-related investigation (from the initiation date to the resolution date) is about 38 months (FCPAC, 2021).

In the fiscal year 2020, there was a focus on shortening the time it takes to complete investigations. In situations where appropriate, there is an increase in staffing, engagement earlier on in an investigation with relevant parties, and attempts to leverage cooperation. These changes have had the desired effect. In the fiscal year 2020, there was a success in decreasing the average time it takes to complete these investigations from 37 months to 34 months, as reported by the SEC in the Division of Enforcement 2020 Annual Report (Avakian, 2020).

The lengthy process of these investigations comes with high costs to targets of FCPA violations, the DOJ, and the SEC. These costs involved with completing an investigation range from fees for third parties, such as lawyers and accountants, to costs associated with large-scale audits of a company's documents, policies, and procedures. In March of 2013, a handful of companies—including Walmart—had reported over $157 million in payments for FCPA-related investigation costs alone. *Compliance Week Analysis* stated that "Walmart estimates the FCPA investigation costs for FY2013 to be about an average of $604,000 a day." Walmart also disclosed that it had spent an additional $45 million in costs for the first quarter of the fiscal year 2014 for "FCPA and compliance matters." (Jaeger, 2013). In 2019, Walmart reported an estimated $900 million in costs from compliance enhancements and internal investigations into foreign bribery law violations in Mexico, Brazil, China, and India (Tokar, 2019).

Walmart's violation was only an alleged $52,000 bribe which was not material. However, FCPA does not have a materiality threshold for compliance with the law. So, SOX compliance does not equal FCPA compliance.

Walmart is not alone in paying the high price of investigation for FCPA violations. The Stanford Foreign Corrupt Practices Act Clearinghouse states that the average monthly cost for an FCPA-related investigation is around $1,792,640 (FCPAC, 2021). These costs do not include the possible fines, penalties, disgorgements, and restitutions that are to be paid if the DOJ or SEC conducts the investigation, as mentioned in the "Revenue Collections" portion of this article.

VIII. Conclusion

The Foreign Corrupt Practices Act applies to domestic and foreign government practices in discouraging bribes with government officials. Along with ways of avoiding violation of the Act, this article illustrates how U.S. state governments have joined the effort to deter and detect bribes and corruption targeted by the FCPA. The lengthy process of investigations causes high costs to targets of FCPA investigations, the DOJ, and the SEC. While the imposition of fines has produced meaningful revenues for state and federal coffers, these fines and penalties can be avoided or significantly reduced by violators of the Act. Businesses should adopt monitoring and continuous training on FCPA violation prevention practices to avoid running afoul of the FCPA. Although it might be difficult, discreetly placing incentives for the chain of command in businesses may help in avoiding FCPA violations. There is a beneficial aspect and a responsibility to learn from the current FCPA regulation changes, along with recent published cases and penalties. One way for businesses to avoid inadvertently violating the FCPA is to invest in FCPA-related preventative practices and technologies for their business. The FCPA may need to be reviewed for its effectiveness and efficiency in fighting illegal bribes as initially conceived by the drafters of the Act.

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Table 1: The States With Anti-Corruption Measures for Public Officials Index Table 2018

Alabama	35%	Illinois	55%	Montana	54%	Rhode Island	75%
Alaska	69%	Indiana	28%	Nebraska	60%	South Carolina	65%
Arizona	28%	Iowa	40%	Nevada	54%	South Dakota	34%
Arkansas	66%	Kansas	72%	New Hampshire	67%	Tennessee	50%
California	75%	Kentucky	74%	New Jersey	59%	Texas	62%
Colorado	57%	Louisiana	48%	New Mexico	36%	Utah	31%
Connecticut	44%	Maine	48%	New York	56%	Vermont	37%
D.C.	72%	Maryland	56%	North Carolina	42%	Virginia	35%
Delaware	50%	Massachusetts	56%	North Dakota	0%	Washington	78%
Florida	64%	Michigan	28%	Ohio	61%	West Virginia	63%
Georgia	40%	Minnesota	46%	Oklahoma	42%	Wisconsin	57%
Hawaii	64%	Mississippi	40%	Oregon	55%	Wyoming	12%
Idaho	16%	Missouri	58%	Pennsylvania	51%		

Note: Adopted from Shruti, S. (2018), The States with Anti-Corruption Measures for Public Officials (SWAMP). SWAMP Index (coalitionforintegrity.org).