

Chapter 16 – update

FEDERAL LEGISLATION FURTHERING FOREIGN POLICY AND INTERNATIONAL OBJECTIVES

Wide-ranging legislation promoting various enforcement-related international objectives has had an enormous impact on both the international and domestic operations of businesses in the United States. All businesses should have a general knowledge of the federal statutes that impose civil and criminal liability on companies and individuals in order to further foreign policy and international objectives. In fact, the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have indicated through their active and continuing enforcement efforts that Foreign Corrupt Practices Act (FCPA or Act) enforcement is a top priority.¹

SEC investigations during the mid-1970s revealed that more than 400 U.S. companies had admitted to making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties.² In 1977, Congress responded to this widespread bribery by enacting the FCPA.

The FCPA has two parts: (1) it criminalizes the payment of bribes, directly or indirectly, to foreign officials for the purpose of gaining preferential treatment (known as the Antibribery provisions), and (2) it imposes strict recordkeeping and internal control requirements on all companies subject to the jurisdiction of the SEC (known as the Books and Records provisions). The Act applies to all issuers on American exchanges and to private U.S. companies and their officers, directors, stockholders, employees, and agents, as well as to individual U.S. citizens and residents. Foreign companies that trade equity or debt on an American exchange are considered “issuers” and therefore the FCPA applies to them and their officers, directors, stockholders, employees, and agents. It also applies to foreign companies and non-U.S. citizens for conduct that occurs within the United States, and to international organizations. Violations of the Act, which is enforced by the SEC and the DOJ, carry potentially severe criminal and civil penalties.

¹ In addition to the 2,253 companies that were found to have participated in some form of fraud, as reported in the final report of the Independent Inquiry Committee regarding the UN Oil-for-Food Programme, scores of companies have disclosed in their annual reports filed with the SEC that they are investigating or have disclosed to the government violations of the FCPA.

² See Foreign Corrupt Practices Act Antibribery provisions, *available at* <http://www.usdoj.gov/criminal/fraud/fcpa/dojdocb.htm>.