

Practitioners, corporate counsel, compliance officials, accountants, and anyone engaged in international business will find this practical book to be an indispensable resource and invaluable compilation of source materials and key documents for dealing with matters involving the Foreign Corrupt Practice Act and the anti-bribery legal regimes being adopted in much of the world.

The 800-page Second Edition provides an in-depth analysis of the Act and significantly expands upon the First Edition by providing critical updates reflecting the latest developments in this rapidly-changing area of law; a broader and more expansive analysis of the FCPA, including those aspects that relate directly to Sarbanes-Oxley; and a detailed analysis of the debarment practices associated with the anti-corruption policies of the World Bank Group. The analysis is extensively annotated with over 1,000 endnotes citing source materials and providing useful insights for practitioners. The Second Edition also includes an extensive variety of sample forms and checklists, including: anti-bribery policies, accounting and record-keeping policies; compliance certifications, contract compliance and termination language, and much more. Key source materials, including opinion procedure releases and a useful annotated index to the opinion procedure releases, are also included.

In terms of particulars, the Second Edition directly addresses a wide range of issues:

- The anti-bribery provisions
  - When the provisions apply:
    - to domestic and foreign publicly-held entities
    - to other domestic and foreign entities
    - to non-profit organizations
    - to individuals
    - to individuals who are not U.S. citizens
  - How others can be held liable for violations
  - Essential elements
  - Knowledge and vicarious liability
  - Distinguishing corrupt intent from a gratuity
  - State-owned enterprises and determining who is a foreign official
  - The defense of duress or economic
  - Determining what constitutes an expediting payment
  - Ensuring that business expenditures are *bona fide*
  - Applicability of local law defense
  - Use of the opinion procedure process
- The accounting and record-keeping provisions
  - What entities are issuers
  - When the provisions apply:
    - to domestic and foreign issuers
    - to domestic and foreign subsidiaries
    - to individuals
    - to individuals Who Are Not U.S. Citizens
  - How others can be held liable for violations
  - Falsification of books and records
    - No materiality requirement
    - Implications for prosecutions
    - Recording expediting payments
  - Misrepresentations or omissions to auditors
  - Broad reach of internal accounting control provisions
  - Strict liability for civil violations
  - Control person liability
  - Twenty-year sentence for criminal violations
- Enforcement
  - Liability for acts of others
  - Vicarious liability for entities
  - Key factors for avoiding prosecution by entities
  - Statute of limitations
  - Deferred and non-prosecutions agreements
  - Monitors
  - Independent compliance consultants
- Instituting protective measures
  - How to avoid an investigation
  - Compliance programs
    - Critical components
    - Red flags
    - Due diligence
    - Cost effective due diligence for smaller entities
    - Extending compliance programs to affiliates
- Contract language
  - Termination provisions
  - Structuring agreements
  - Reason to believe language
  - Reporting on categories of expenditures
  - Audit rights
  - Commercial bribery
- Responding to potential violations
  - Identifying potential violations
  - Internal investigations
  - Disclosure implications
    - Justice Department disclosure policy
    - SEC disclosure policy
    - Disclosures in financial statements
    - Internal control disclosures
  - Sarbanes-Oxley implications
- Implications for business, employment, and client relationships
  - Contracting with governmental entities
  - Private rights of action
  - Whistleblower protections
  - Public-policy exception to at-will employment
  - Enforcement of contracts
  - Securities fraud
  - Limits on client confidentiality
  - Duty of auditors to detect and report fraud
- Implications of international anti-bribery conventions
  - The OECD Convention
  - The Inter-American Convention Against Corruption
  - The Council of Europe Criminal and Civil Law Conventions
  - The United Nations Convention Against Corruption
  - Enhanced international cooperation
  - Enforcement of similar legal regimes by other countries
  - Prohibitions on tax deductibility
  - Implications for export credit agencies
- Multilateral lending institutions
  - Anti-corruption policies
  - Factors in eligibility determinations
  - Conduct subject to investigations
  - Investigations
  - Debarment proceedings
  - Cross-debarment practices
  - Disclosures to governments and other institutions
  - Voluntary disclosure program