

CORPORATE COMPLIANCE SERIES

Designing an Effective FCPA and Anti-Bribery Compliance Program

William M. Hannay

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Designing an Effective FCPA and Anti-Bribery Compliance Program

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by

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*To Myron H. Bright and Tom C. Clark for
inspiring, training, and having
confidence in me*

Preface

With the U.S. Department of Justice and the Securities and Exchange Commission bringing a record number of prosecutions and enforcement actions under the Foreign Corrupt Practices Act, the FCPA has become a “hot topic.” Add to that the increased risk of prosecutions in countries that have adopted one or more of the recent international conventions targeted at bribery and corruption and it becomes clear that an understanding of how to comply with the FCPA is critical for companies doing business abroad.

This book is intended as a one-volume resource that will help you learn:

- How to meet the U.S. Sentencing Guidelines requirement that the company “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law,” including:
 - The need to get senior management “on board”
 - Using the Board’s Audit Committee to encourage compliance
 - Senior management’s role in encouraging ethical behavior and commitment to compliance
 - Role of the Chief Financial Officer (CFO), Comptroller, and Chief Internal Auditor in keeping and auditing the company’s books and records and implementing internal controls in a way that will prevent and detect FCPA violations
 - Role of inside and outside counsel in designing and implementing training and discipline to promote an appropriate compliance culture
 - Role of officers responsible for overseas operations in delivering the message of compliance throughout large and diverse organizations
 - Using compliance audits as a tool to foster compliance.
- How to meet the Sentencing Guidelines’ requirement that the company “exercise due diligence to prevent and detect criminal conduct” by using a seven-step design/build program, including:
 - CEO, CFO, and/or Board appointment of a compliance officer with proper training and authority and a compliance committee to support him/her
 - Creating a Code of Conduct that means something
 - Organizing and conducting meaningful FCPA training programs for all relevant employees

- Screening and excluding from management those that have violated or have a propensity to violate the FCPA or similar laws
- Periodic testing and auditing of the effectiveness of the compliance program and provide anonymous channels for employees to seek guidance or report potential violations
- Incentivizing compliance and punishing violations by officers and employees
- Modifying and correcting any elements of the compliance program if violations have occurred.
- How to customize compliance programs for particular industries or business models, including:
 - Compliance for companies engaged in performing significant infrastructure work for, or selling major equipment to, the governments of developing countries
 - Compliance for companies engaged in acquiring or extracting oil or other mineral rights from the governments of developing countries
 - Compliance for companies engaged in routine manufacturing work through special industrial, manufacturing, or investment zones in developing countries
 - Compliance for companies exporting or importing goods, equipment, or commodities into or out of developing countries
 - Compliance for companies that engage sales agents and other third parties in high-risk markets
 - Compliance for companies doing business in high-FCPA risk countries, including China, Russia, and many African countries.

Who can benefit from this guidance? The list of individuals and companies is a long one. The most likely beneficiaries are company officers and inside counsel who are responsible for:

- Overseas operations of U.S. companies with overseas operations (e.g., inside counsel, company financial officials (CFOs, comptrollers, and internal auditors), and company officers and managers, especially those in countries that rank high on foreign bribery surveys);
- Overseas operations of foreign-owned and/or multinational companies that are subject to the FCPA because they have U.S. operations and/or are listed on U.S. securities exchanges (e.g., inside counsel, financial officials (CFOs, comptrollers, and internal auditors), and company officers and managers);
- Auditing company books and records and internal controls to ensure compliance with SEC rules and the FCPA accounting requirements (e.g., employees of outside accounting firms);
- Internal investigations and auditing for fraud and FCPA violations (e.g., consultants/employees of outside ac-

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counting firms).

My hope is that the materials provided are helpful and instructive in some degree to all those who read this book. I welcome comments and suggestions for improvements to this book, and would be pleased to receive copies of materials used by other attorneys and companies in their FCPA compliance programs. These materials may be sent to me at the following address: William M. Hannay, Schiff Hardin LLP, Suite 6600, 233 S. Wacker Drive, Chicago, IL 60606, or by e-mail at whannay@schiffhardin.com.

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William M. Hannay is a partner in the Chicago-based law firm of Schiff Hardin & Waite, where he concentrates his practice in litigation and counseling in the area of antitrust and trade regulation law. He is an Adjunct Professor at Chicago-Kent law school, teaching courses in antitrust law, intellectual property law, and international law, and is a past chairman of the Chicago Bar Association's antitrust law committee.

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Before joining Schiff Hardin & Waite, Mr. Hannay served as an Assistant District Attorney under Robert M. Morgenthau in New York City and, prior to that, as a law clerk to Justice Tom Clark of the United States Supreme Court and Judge Myron H. Bright of the United States Court of Appeals for the Eighth Circuit. He graduated from Yale University in 1966 and Georgetown University Law Center in 1973. He is a Vietnam veteran and resides in Barrington Hills, Illinois, with his wife and three children.

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