

CONTENTS

Table of Cases	xv
Table of Legislation	xix
Introduction	xxvii
Chapter 1: UK Anti-Corruption Law	
A. The current state of anti-corruption law in the UK	1-01
B. Pre-existing bribery law in the UK	1-03
I. Common law	1-04
II. Public Bodies Corrupt Practices Act 1889	1-06
III. Prevention of Corruption Act 1906	1-12
IV. Prevention of Corruption Act 1916	1-18
V. Anti-Terrorism, Crime and Security Act 2001	1-20
C. Corporate criminal liability	1-26
D. Money laundering	1-27
E. Confiscation, civil recovery and procurement	1-30
I. Confiscation	1-31
II. Civil recovery	1-32
III. Procurement	1-34
F. The UK's accession to the OECD Anti-bribery Convention	1-35
G. The Bribery Act	1-37
I. Liability of parent company for acts of subsidiary	1-39
II. Other provisions	1-40
H. The Serious Fraud Office	1-41
I. Aims and criteria for acceptance of cases	1-43
II. Section 2 powers	1-44
III. City of London Police Overseas Anti-Corruption unit	1-46
IV. Mutual legal assistance	1-47
I. Noteworthy investigations and actions	
I. Mabey & Johnson	1-49
II. BAE Systems & Al-Yamamah	1-51
J. The "Americanisation" of UK anti-corruption efforts	
I. Increased use of plea agreements	1-72
II. Non-prosecution agreements & deferred prosecution agreements	1-73
III. Increased resources and personnel for overseas corruption	1-74

CONTENTS

Chapter 2: The OECD Anti-Bribery Convention

A. Introduction	2-01
B. History of the OECD	2-02
C. The OECD's purpose	2-03
D. The OECD's structure	2-04
E. Membership in the OECD	2-05
F. Functions of the OECD	2-07
G. History of the Anti-Bribery Convention	2-08
H. The Anti-Bribery Convention	2-13
I. Applicability	2-18
II. Jurisdiction	2-19
III. Enforcement	2-20
IV. Limitations	2-21
V. International cooperation	2-22
I. The implementation process	2-24
J. The working group's mandate	2-25
I. Phase I	2-26
II. Phase II	2-27
K. Difficulties in implementation	2-28
I. Argentina	2-31
II. Chile	2-32
III. Ireland	2-33
IV. Japan	2-35
V. Luxembourg	2-37
VI. Spain	2-38
VII. Turkey	2-39
VIII. The United Kingdom	2-41

Chapter 3: The US Foreign Corrupt Practices Act

A. Introduction	3-01
I. History of Legislation	3-05
B. Anti-bribery provisions	
I. Provisions	3-12
II. Jurisdiction	3-13
III. Interstate instrumentality	3-16
IV. Corruptly	3-17
V. Payment or anything of value	3-22
VI. Foreign official	3-23
VII. Knowledge standard	3-26
VIII. Purpose—to obtain business or secure an improper advantage	3-27
IX. Penalties	3-29
C. Exceptions and affirmative defences	
I. Exception: routine governmental action or facilitating payments	3-30

CONTENTS

II. Affirmative defence: payments authorised by foreign country's written laws	3–33
III. Affirmative defence: reasonable or bona fide expenditure	3–35
D. Record-keeping and accounting provisions	
I. Provisions	3–36
II. Jurisdiction	3–37
III. Subsidiaries	3–38
IV. Payments	3–39
V. Books and records provision	3–40
VI. Falsification of books and records	3–41
VII. Internal accounting controls provision	3–42
VIII. Sanctions	3–43
E. Enforcement	3–44
I. DOJ	3–45
II. SEC	3–46
III. General enforcement	3–47
IV. DOJ opinion procedure	3–49
V. Statute of limitations	3–52

Chapter 4: Dealing with International Corruption—Australia

A. The OECD Convention	4–01
B. The offence of bribing a foreign public official	4–02
C. Defences to the offence of bribing a foreign public official	4–05
I. Defence where the conduct is lawful in the foreign public official's country	4–06
II. Defence relating to facilitation payments	4–07
D. Territorial and nationality requirements	4–10
E. Prosecution	4–11
F. Penalties	4–12
G. Jurisdiction and international cooperation	4–15
H. Enforcement activities	4–16
I. Australian federal police	4–17
II. Other enforcing entities	4–19
III. Whistleblowing	4–20
I. Noteworthy investigations	4–21
J. Australian wheat board oil-for-food programme	
I. Background	4–22
II. Investigation and findings	4–24
K. Alkaloids of Australia Pty Limited	4–27
L. Rhine Ruhr Pty Limited	4–29
M. Rio Tinto Limited	4–30
N. United Nations Convention Against Corruption	4–32
O. Summary	4–34

CONTENTS

Chapter 5: Brazil's Anti-Corruption Laws

A. Introduction	5-01
B. Current anti-corruption legislation	
I. The 1988 Constitution	5-04
II. The 1992 Law of Administrative Probity	5-06
C. Negligence or willful misconduct	5-13
D. Burden of proof	5-14
E. Sanctions under law 8.492	5-15
F. Seizure, freezing of assets and other provisional remedies	5-18
G. Anti-corruption provisions under the penal code	5-22
H. Definition of public official by the Brazilian penal code	5-23
I. Embezzlement	5-25
J. Passive corruption	5-27
K. The furthering of private interests by a public official	5-30
L. Acts of corruption practiced by private parties	
I. Active corruption	5-32
II. International Anti-Corruption Conventions adopted by Brazil	5-34
M. The enforcement of the conventions in Brazil	5-40
N. Bribery of foreign public officials in international commercial transactions	
I. Definition of a foreign public official	5-41
II. Active corruption in international commercial transactions	5-42
III. Influence peddling in international commercial transactions	5-45
O. Deficiencies in the application in Brazil of anti-corruption conventions	5-48
P. The criminal liability of Brazilian companies	5-50
Q. Forthcoming legislation	5-53
R. Conclusion—Enforcement of the anti-corruption statutory provisions	5-55

Chapter 6: Hong Kong's Anti-Corruption Laws

A. Background	6-01
B. The statutory offences	6-05
C. The common law offence of misconduct in public office	6-10
D. Investigative powers enhanced	6-11
E. Interception of communications and surveillance	6-16
F. Procedural and evidential provisions enhanced to improve prospects of successful prosecution	6-17
G. Protection of informants and witnesses enhanced	6-22
H. Powers of sentencing and confiscation and consequences of conviction	6-26
I. Enforcement in practice	6-29
J. Investigating procedure (from report to disposal)	6-34
K. Relations with other agencies and the private sector	6-37

CONTENTS

L. Investigative cooperation and mutual legal assistance	6-39
M. Results	6-40

Chapter 7: The Current State of Anti-Corruption Law in India

A. Introduction	
I. Corruption in India	7-01
II. Legislative history & background	7-02
B. Anti-Corruption laws	
I. The Prevention of Corruption Act 1988	7-05
II. Indian Penal Code 1860	7-13
C. Extra-territoriality reach	
I. PCA	7-14
II. IPC	7-15
D. International conventions	7-16
I. Potential amendments to corruption laws pending ratification of the UN Convention Against Corruption (“UNCAC”)	7-17
II. Prevention of Money Laundering Act 2002	7-18
III. Right to Information Act 2005	7-20
IV. The Representation of the People Act 1951	7-22
V. Subordinate legislation/Service rules	7-23
E. Public procurement	7-24
I. Liability of private individuals	7-25
II. Liability of foreign public officials	7-26
F. Institutional framework	7-27
I. Central Vigilance Commission	7-28
II. Central Bureau of Investigation	7-30
III. The office of the comptroller and auditor general	7-31
IV. Chief information commission	7-32
V. Serious fraud investigation office	7-33
VI. CVC	7-35
G. Corruption scandals	
I. VK Krishna Menon scandal	7-38
II. 1957 LIC-Mundra deals	7-39
III. Bofors scandal	7-40
IV. Jharkhand Mukti Morcha MP’s	7-41
V. Judiciary scandals	7-42
VI. Other major scandals	7-43
H. Conclusion	7-44

Chapter 8: Conducting Internal Investigations in Connection With Allegations of Bribery

A. Introduction	8-01
B. The regulators	
I. United States	8-02

CONTENTS

II. United Kingdom Serious Fraud Office	8-05
III. Australian federal police	8-06
C. Internal investigations	8-07
I. Practical implications of the regulators powers	8-08
II. Cooperation with regulatory investigations	8-10
III. Impediments to the investigation of international corruption	8-16
D. Internal investigations	
I. Generally	8-34
II. Employees and witnesses	8-43
III. Documents and information	8-55
IV. Coordinating responses to multi-jurisdictional investigations	8-64
V. What may happen once the government obtains an ultimate finding	8-67

Chapter 9: Forensic and Accounting Issues Associated with International Corruption Enquiries

A. Introduction	9-01
B. Planning, scoping and orientation	9-04
I. Who is at risk?	9-08
II. Typical high risk activities	9-10
C. Data collection and preservation	
I. Context and focus	9-11
II. Paper and documentary evidence	9-13
III. Electronic data and media	9-15
VI. Witness evidence	9-18
D. Data protection and privacy law considerations	
I. Data protection	9-21
II. Further privacy considerations	9-22
E. Field work—detecting corrupt payments in books and records	9-23
I. Witnesses, whistleblowers, allegations	9-25
II. Methods and techniques for detecting corrupt payments	9-27
III. Data analytics	9-33
IV. Corporate intelligence—Conflicts of interest	9-36
F. Investigating agent and third party payments	9-38
G. Follow-up and verification	9-39
H. Reporting	9-40

Chapter 10: Anti-Corruption Considerations in International Mergers And Acquisitions

A. Introduction	10-01
B. Case studies	
I. Titan	10-06
II. Syncor	10-08

CONTENTS

III. InVision	10–09
IV. Vetco Gray	10–10
V. Halliburton	10–12
VI. Monsanto	10–14
VII. El Paso	10–15
VIII. Opinion release 08–02	10–16
C. Best practices	
I. Comprehensive due diligence/protective contractual provisions/FCPA compliance program integration	10–18
II. Comprehensive due diligence	10–20
III. Contractual protections	10–29
IV. Compliance programme integration	10–31
V. Conclusion	10–32

Chapter 11: Effective Anti-Corruption Programmes

A. Introduction	11–01
B. Why do organisations need an effective anti-corruption programme?	11–02
I. Ensuring the company, its directors and employees are compliant with the law in the jurisdictions that it operates in	11–03
II. Retaining market and stakeholder credibility around ethical business practices and protecting shareholder value	11–04
III. Providing a defence or mitigating evidence should it be determined that corruption has occurred	11–05
IV. Doing business globally	11–07
C. What does an effective anti-corruption compliance programme look like?	11–08
I. Existing guidance	11–09
II. An effective framework	11–10
D. How to design an effective anti-corruption compliance programme	11–13
I. Investigation	11–14
II. Framework/risk assessment	11–15
III. Gap analysis and reporting	11–16
IV. Design and development of framework	11–17
V. Remediation	11–28
E. Implementation of an effective anti-corruption compliance programme	11–29
I. Leadership	11–30
II. Adequate resource	11–31
III. Effective project planning	11–32
IV. Training and communications	11–33
F. Why do some anti-corruption programmes succeed while others fail?	11–38
G. Conclusion	11–39