

# Anti-Corruption and Other Compliance Issues

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## 7 Nuances You Need to Know

- Bribery can include **“anything of value”** such as gifts, entertainment, loans, or providing jobs if there is corrupt intent to influence a decision maker to obtain business or other improper advantage
- **Indirect benefits** may be viewed as bribes
- **Offers, promises, or authorizations** are sufficient for liability
- **“Government official” is broad** and ranges from employees of government controlled companies such as national oil companies to politicians to customs officials
- Payments to protect **life and health** of employees are not facilitation payments
- Companies may be held **accountable for improper actions of agents or business partners**
- The law **does not prohibit reasonable business entertainment.**



## U.S. FCPA – Latest Trends and Issues

- FCPA jurisdiction: the long arm lengthens
- Industry focus
- DOJ guidance
- Evidence compliance works: Morgan Stanley and Ralph Lauren

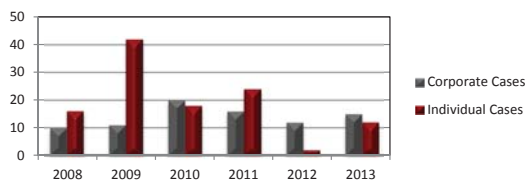
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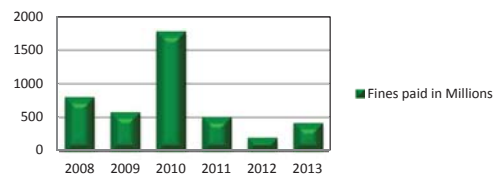
## Enforcement Trends

Date	Company	Investigation costs	Settlement	Share price decline after investigation announcement
2008	<b>Siemens</b>	\$850 million	\$1.4 billion	18%
2010	<b>Daimler</b>	\$500 million	\$185 million	Unknown
2010	<b>Natco</b>	\$11 million	\$65,000	Unknown
Ongoing	<b>Avon</b>	At least \$300 million	Ongoing	8%
2013	<b>Weatherford</b>	At least \$113 million	\$250 million	Unknown
2005	<b>Titan</b>	\$2.9 million	\$28 million	4.3%
2008	<b>Willbros</b>	Unknown	\$32 million	39%
2007	<b>Immucor</b>	Unknown	\$0	19%

U.S. Foreign Bribery Prosecutions



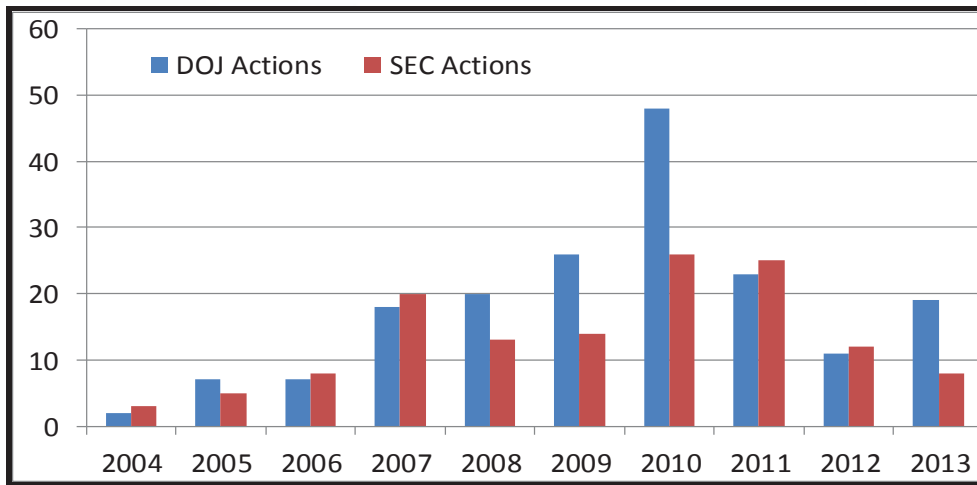
U.S. Foreign Bribery Enforcement



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# Enforcement Trends

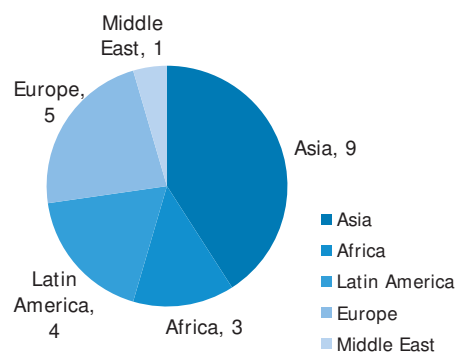


# Latest Trends and Issues

- Industry focus

- Pharmaceutical and life sciences push
  - Eli Lilly, Johnson & Johnson, Biomet, Smith and Nephew, Orthofix, Pfizer
- Oil & gas and technology: More of the same
  - Total, Oracle, Parker Drilling, JGC, Tenaris, Tyco, Marubeni, Data Systems & Solutions, Maxwell Technologies, Deutsche Telekom
- Financials and Insurance
  - Morgan Stanley, Direct Access Partners LLC, Allianz SE
- Aircraft maintenance
  - Bizjet, Lufthansa, Nordham Group

- Alleged FCPA Violation Locations (2012)



## Recent Enforcement Activity

	Total S.A. (May 29, 2013)	Alcoa (January 9, 2014)
<b>The Company:</b>	<ul style="list-style-type: none"> <li>Total, a French oil company, publicly traded on the NYSE</li> <li>"issuer" under FCPA</li> </ul>	<ul style="list-style-type: none"> <li>Alcoa, a global aluminum producer, and Alcoa World Alumina LLC (LLC), a US-based subsidiary</li> <li>LLC is "domestic concern" under FCPA</li> <li>Alcoa is "issuer" under FCPA, based on SEC's theory that Alcoa Inc.'s subsidiaries acted as agents of Alcoa Inc.</li> </ul>
<b>The Conduct:</b>	<ul style="list-style-type: none"> <li>Over 9 years, paid \$60 million to the head of a wholly-owned subsidiary of the government-owned National Iranian Oil Company in order to obtain contracts for development of oil and gas fields</li> </ul>	<ul style="list-style-type: none"> <li>Over 20 years, made more than \$110 million in corrupt payments through a London-based consultant or his controlled companies to government officials in Bahrain</li> </ul>
<b>DOJ Enforcement:</b>	<ul style="list-style-type: none"> <li>Entered into a deferred prosecution agreement</li> <li>Total required to review existing internal controls and policies, engage a corporate compliance monitor for 3-year term, and pay criminal penalty of \$245.2 million</li> </ul>	<ul style="list-style-type: none"> <li>Agreed to plead guilty to one count of violating the anti-bribery provisions of the FCPA</li> <li>Alcoa, Inc. agreed to maintain and implement an enhanced global anti-corruption program and pay criminal penalty of \$209 million</li> </ul>
<b>SEC Enforcement:</b>	<ul style="list-style-type: none"> <li>Settled with SEC</li> <li>\$153 million in disgorgement (4th largest disgorgement in FCPA history)</li> </ul>	<ul style="list-style-type: none"> <li>Settled with SEC</li> <li>\$161 million in disgorgement (3rd largest disgorgement in FCPA history)</li> </ul>
<b>The Settlement:</b>	<ul style="list-style-type: none"> <li>\$398 million – 4th largest in FCPA history</li> </ul>	<ul style="list-style-type: none"> <li>\$384 million – 5th largest in FCPA history</li> </ul>



## U.S. Enforcement Environment Compliance Focus

- The DOJ and SEC "consider the adequacy of a company's compliance program when deciding, what if any, action to take" when investigating possible FCPA violations
- U.S. Sentencing Guidelines provide up to a 30% discount off of penalty
- DOJ corporate charging guidelines have 3 of 9 factors that mention corporate compliance
- Compliance as declination consideration

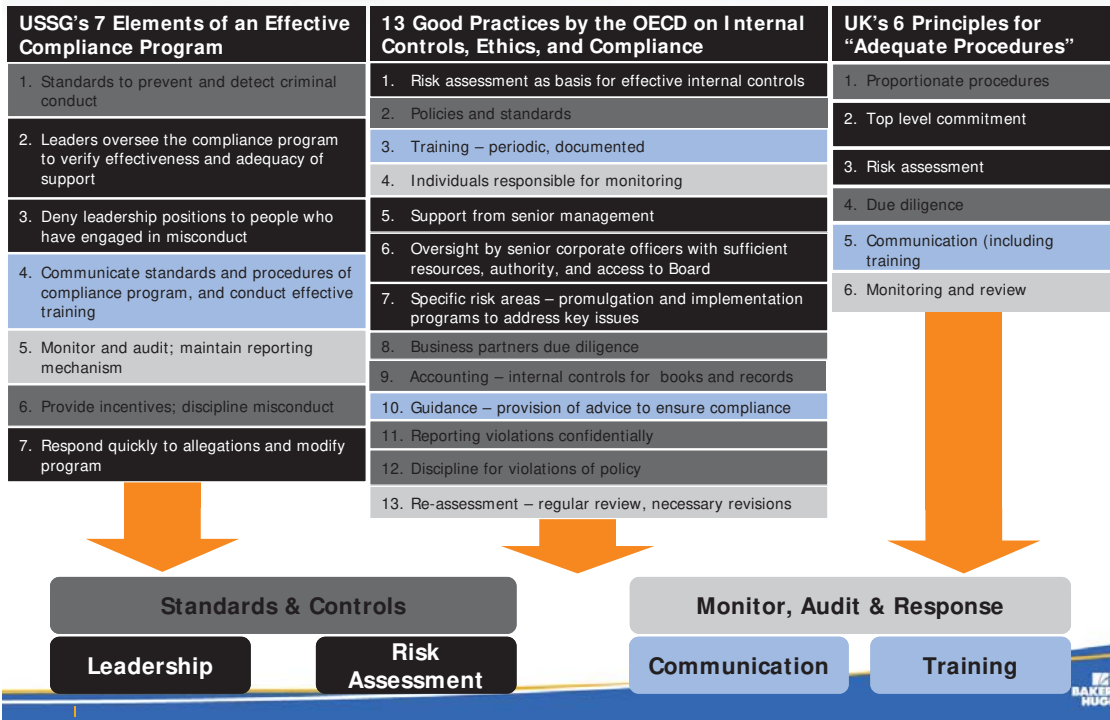


*"After considering all the available facts and circumstances, including that Morgan Stanley constructed and maintained a system of internal controls . . . the Department of Justice declined to bring any enforcement action against Morgan Stanley . . ."*

- DOJ Press Release



# Compliance Framework



## U.S. DOJ Guidance

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Anti-Corruption and Other Compliance Issues

Also available as part of the eCourse

[The Globalization of Anti-Corruption, plus Anti-Corruption Drafting](#)

First appeared as part of the conference materials for the  
2014 International Upstream Energy Transactions session  
"The Globalization of Anti-Corruption"