OVERSEAS PRIVATE INVESTMENT CORPORATION

ANTI-CORRUPTION POLICIES AND STRATEGIES HANDBOOK

September 2006

MESSAGE FROM OPIC'S PRESIDENT AND CEO

Official corruption has a pernicious effect on investment, both at home and abroad. It threatens core principles of the free market system and undermines the rule of law. Corruption manifests itself in many different ways. Sometimes it is as direct as a request or demand for a bribe. Other times, it is much more subtle. By raising the cost of doing business in inappropriate and inefficient ways, it diverts much-needed capital to other destinations, and it has resisted global efforts to eradicate it.

Much progress has recently been made. Financial institutions and organizations such as the World Bank, the Organization for Economic Co-operation and Development ("OECD"), the U.S. Millennium Challenge Corporation ("MCC"), the United Nations and Transparency International are all playing a greater role in combating corruption. OPIC strongly supports their efforts, and continually seeks ways to work with these institutions to advance the mutual goal of eradicating global corruption.

The U.S. Government continues to play an important part in the global fight against corruption. At the G8 2006 Summit in Saint Petersburg, the United States and other nations reaffirmed their pledge to fight against corruption and to promote increasing transparency of public funds management. On August 10, 2006, President Bush unveiled his national strategy to internationalize efforts against high-level corrupt by senior government officials. He stated:

> "*High-level corruption by senior government officials, or kleptocracy, is a grave and corrosive abuse of power and represents the most invidious type of public corruption. It threatens our national interest and violates our values. It impedes our efforts to promote freedom and democracy, end poverty, and combat international crime and terrorism. Kleptocracy is an obstacle to democratic progress, undermines faith in government institutions, and steals prosperity from the people. Promoting transparent, accountable governance is a critical component of our freedom agenda*."
>
> President George W. Bush, August 10, 2006

In 1977, Congress enacted the Foreign Corrupt Practices Act ("FCPA"). The U.S. Department of Justice is charged with both criminal and civil enforcement of the FCPA's provisions with respect to domestic concerns and foreign companies and nationals. The Securities and Exchange Commission is responsible for civil enforcement of the FCPA anti-corruption provisions concerning issuers of securities subject to Commission oversight.

OPIC, as a U.S. Government agency, works carefully to ensure that anti-corruption best practices are used in connection with the projects it supports, and that OPIC projects are in full compliance with the FCPA and other anti-corruption laws. OPIC conducts extensive due diligence on proposed projects from the outset, and monitors projects at all stages for indications of corrupt payments and practices. As a prospective recipient of OPIC project support, you will be asked to

make certifications with respect to anti-corruption compliance in connection with your application for OPIC financing or political risk insurance. Additional compliance assurances will be required in the OPIC transaction documentation. You will also be requested by OPIC to provide information about you and/or your firm's anti-corruption compliance program.

This Handbook is intended to explain OPIC's general anti-corruption policies and procedures, and your obligations to them. The Handbook also contains a detailed overview of the FCPA. The FCPA imposes requirements in two broad areas: anti-bribery and accounting. The anti-bribery provisions, while broadly proscribing corrupt payments to foreign officials, also provide guidance with respect to third-party payments, certain permissible payments, and affirmative defenses to alleged violations.

The accounting provisions, which were designed to operate in tandem with the anti-bribery provisions of the FCPA, require corporations covered by the provisions to make and keep books and records that accurately and fairly reflect the transactions of the corporation, and to devise and maintain an adequate system of internal accounting controls.

I hope you will find the Handbook helpful as you proceed with your application for OPIC financing or insurance. OPIC needs your support in our joint effort to combat corruption.

Thank you for your assistance.

Robert Mosbacher, Jr.

CORRUPTION CONTINUES TO THREATEN GLOBAL DEVELOPMENT

Why do we care about the impact of corruption? As the U.S. government agency with a mandate to promote international development and protect U.S. investments abroad, OPIC recognizes that fighting corruption is deeply tied to its mission. From the perspective of economic growth and development, corruption poses a threat to investment for several reasons: it reduces public and private sector efficiency when it enables people to assume positions of power through patronage rather than ability; distorts the financial and economic environment; promotes rent-seeking behavior instead of the competitive market, and, at the limit, introduces instability and anarchy into the political process. A predictable economic environment is also important for private investors. When investors are assured that the returns on enterprise and investment accrue to the entrepreneur and investor, investment is more likely to occur. An unstable economic environment where corruption and bribery are prevalent increases costs and makes investment returns subject to political machinations.

There is still much work to be done. More than two-thirds of the 159 nations surveyed in Transparency International's 2005 Corruption Perceptions Index (CPI) scored less than five out of a clean score of 10, indicating serious levels of corruption in a majority of the countries surveyed. The 2005 Index bears witness to the double burden of poverty and corruption borne by the world's least developed countries. Corruption is a major cause of poverty as well as a barrier to overcoming it.

Extensive research shows that foreign investment is lower in countries perceived to be corrupt, which further thwarts their chance to prosper. When countries improve governance and reduce corruption, they reap a "development dividend" that, according to the World Bank Institute, can include improved child mortality rates, higher per capita income, and greater literacy. World Bank research conducted on governance indicators supports the fact that realistic improvement in a nation's rule of law or control of corruption could result in a significant percent increase in per capita incomes in the long term. *See,* http://www.worldbank.org/wbi/governance/pubs/govmatters4.html.

Stamping out corruption and implementing recipient-led reforms are critical to increasing foreign direct investment, and to realizing the crucial human and economic development goals that have been set by the international community. Strong judiciaries and regulatory regimes are essential to attracting new investment and nurturing growth. With that stated, it is thought that economic globalization is feeding the rule-of-law imperative by putting pressure on governments to offer the stability, transparency, and accountability that international investors demand.

OPIC'S ANTI-CORRUPTION STRATEGY

OPIC recognizes that it can and should play a significant and active role in the global fight to eradicate corruption and help strengthen the rule of law in developing countries. As the sole U.S. government agency with a mission to facilitate and mobilize the

investment of U.S. capital in developing countries, OPIC is keenly aware of the difficulties investors face in markets where the rule of law is weak and corruption is rampant. Often it is OPIC that is the lender or insurer of last resort in such difficult markets, thus it is imperative that OPIC be proactive in the global fight against corruption. Accordingly, OPIC has a very aggressive anti-corruption strategy. In addition to preventing corruption in connection with OPIC-supported projects and fostering rule of law through the policy and legal requirements it places on the transactions it supports, OPIC strongly supports global efforts to enhance transparency and reduce corruption.

At the broadest level, OPIC's stance on anti-corruption issues is intended to reduce the burden that widespread, systemic corruption exacts upon the governments and economies of the world. More specifically, OPIC's approach is centered upon four objectives:

- Encourage global efforts to reduce corruption and enhance transparency in international business transactions;
- Encourage good governance and anticorruption at the country level;
- Support and expand the private sector's role in public sector governance and anti-corruption efforts;
- Prevent corruption in OPIC-supported projects.

To meet these objectives, OPIC participates in governance programs promoting anti-corruption efforts and addresses other related rule of law issues including regulatory, legal and judicial reform. OPIC also works closely with a number of U.S. Government agencies, international financial institutions, and anti-corruption organizations to share information and collaborate on governance, transparency and anti-corruption initiatives. A key part of OPIC's strategy is to encourage the private sector to play an active role in the fight against global corruption. To prevent corruption in OPIC-supported projects, OPIC is constantly reviewing and improving its own internal procedures and policies to ensure adoption of best practices.

OPIC'S ANTI-CORRUPTION HANDBOOK

This Handbook is a key part of OPIC's anti-corruption strategy. The Handbook was developed primarily for sponsors, project companies, investors and other project-related parties involved in OPIC-supported projects. The Handbook provides a comprehensive overview of OPIC's anti-corruption policies, guidelines and procedures, and describes the various requirements that OPIC has imposed on the transactions its supports as part of its anti-corruption strategy. In addition, the Handbook contains a detailed but user-friendly overview of the Foreign Corrupt Practices Act, and an explanation of how it applies to overseas projects supported by U.S. government agencies such as OPIC. Website links providing additional resources are found throughout the Handbook and at Annex B.

This Handbook is available on OPIC's website and is distributed to all applicants seeking OPIC's support. As appropriate, in the context of OPIC's various programs, OPIC requires certifications from its applicants that they have read and understand the

Handbook. Furthermore, applicants seeking OPIC support must certify that they have distributed the Handbook to an OPIC approved list of project parties. For projects involving OPIC finance, OPIC generally requires that the Handbook be distributed to all officers of the project company, its affiliates, all equity holders in the project company of more than ten percent (10%) , and of each person or entity providing credit or other significant support to the project. An overview of other certifications related to corrupt practices laws is provided below.

DEFINITIONS

The term "corruption" is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behavior, the most prominent definitions share a common emphasis upon the abuse of public power or position for personal advantage. The succinct definition utilized by the World Bank is "the abuse of public office for private gain." OPIC has adopted a similar but more detailed definition that identifies specific concerns:

> **"Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them."**

OPIC shares the concerns of international financial institutions such as the Asian Development Bank, that corruption and unethical behavior on the part of individuals in the *private sector* encourages corruption in the public sector. It is OPIC's strong belief that the private sector should play a key role in helping to eliminate corruption in the public sector.

Fraud and corruption commonly include acts of: (i) bribery; (ii) extortion or coercion; (iii) fraud; and (iv) collusion. OPIC defines these terms as follows:

i. "Bribery" -- the offering or giving of anything of value to influence the actions or decisions of third parties or the receiving or soliciting of any benefit in exchange for actions or omissions related to the performance of duties.
ii. "Extortion" or "Coercion" -- the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force, where potential or actual injury may fall upon a person, his/her reputation or property.
iii. "Fraud" -- any action or omission intended to misrepresent the truth so as to induce others to act in reliance thereof, with the purpose of obtaining some unjust advantage or causing damage to others.
iii. "Collusion" -- a secret agreement between two or more parties to defraud or cause damage to a person or entity, or to obtain an unlawful purpose.

These definitions set forth some of the most common types of fraud and corruption but are not meant to be exhaustive. Following, is an illustrative list of corrupt behaviors:

- The design or selection of uneconomical projects because of opportunities for financial kickbacks and political patronage.
- Procurement fraud, including collusion, overcharging, or the selection of contractors, suppliers, and consultants on criteria other than the lowest evaluated substantially responsive bidder or "best value."
- Illicit payments of "speed money" to government officials to facilitate the timely delivery of goods and services to which the public is rightfully entitled, such as permits and licenses.
- Illicit payments to government officials to facilitate access to goods, services, and/or information to which the public is not entitled, or to deny the public access to goods and services to which it is legally entitled.
- Illicit payments to prevent the application of rules and regulations in a fair and consistent manner, particularly in areas concerning public safety, law enforcement, or revenue collection.
- Payments to government officials to foster or sustain monopolistic access to markets in the absence of a compelling economic rationale for such restrictions.
- The misappropriation of confidential information for personal gain, such as using knowledge about public transportation routings to invest in real estate that is likely to appreciate.
- The deliberate disclosure of false or misleading information on the financial status of corporations that would prevent potential investors from accurately valuing their worth, such as the failure to disclose large contingent liabilities or the undervaluing of assets in enterprises slated for privatization.
- The theft or embezzlement of public property and monies.
- The sale of official posts, positions, or promotions; nepotism; or other actions that undermine the creation of a professional, meritocratic civil service.
- Extortion and the abuse of public office, such as using the threat of a tax audit or legal sanctions to extract personal favors.
- Obstruction of justice and interference in the duties of agencies tasked with detecting, investigating, and prosecuting illicit behavior.

OPIC'S ANTI-CORRUPTION POLICIES AND PROCEDURES

1. Due Diligence

OPIC's due diligence program is designed to protect it from doing business with corrupt and unethical organizations, companies and individuals. Sponsors and investors seeking OPIC support for overseas projects should be aware that OPIC has a rigorous and comprehensive due diligence process for identifying and evaluating character risk issues, including violations, and allegations of violations, of anti-corruption and other laws. Before committing itself to any transaction, OPIC works with outside consultants, local counsel, U.S. embassies and many U.S. government agencies to identify potential character risk issues of concern.

OPIC is required by law to advise the U.S. Department of Justice ("DOJ") of any "credible allegations" of fraud and misrepresentation that it receives. In determining whether credible allegations exist, OPIC will review the information it receives on a case-by-case basis and often will request more information on a particular matter from the applicant addressing mitigating circumstances and remediation steps to be taken.

OPIC is a U.S. government agency that, as provided by statute, is "…under the foreign policy guidance of the U.S. Secretary of State." OPIC may be advised by the U.S. Department of State ("DOS") or another U.S. government agency (e.g., U.S. intelligence agency) that it should not support a particular project because of a serious character risk issue such as when a project party (or an officer, director or shareholder of a project party) has ties to terrorism, engages in money laundering, or has otherwise engaged in corrupt, fraudulent or unethical activities. In such a case, OPIC may not be in a position to give the project party, or even the U.S. sponsor or investor, an explanation. OPIC shall not be liable for any claims of loss or damage as a result of a decision to not go forward based on a report or guidance received from another U.S. government agency, whether or not the agency is able to provide any information on its decision.

2. Anti-corruption certifications required by OPIC

All of OPIC's support programs require certain project parties to make a number of certifications related to compliance with the FCPA and other applicable corrupt practices laws. These provisions and certifications are found in OPIC applications and project documents and are generally similar, but tailored to fit the closing documents used by each OPIC program. As noted above, specified OPIC parties are required to certify that they have read and distributed this Handbook. A brief discussion of other required certifications follows below. Applicants are strongly encouraged to review these (and all other) certifications in detail with their legal counsel before signing documents.

A. Sponsor Disclosure Reports

Sponsor Disclosure Reports ("SDRs") are required in all instances where OPIC is providing finance support as part of OPIC initial due diligence process. During the application process for OPIC direct loans, loan guaranties and investment funds, project sponsors, investment fund general partners, and other significant project and fund participants must submit SDRs as a supplement to the information provided through the financing application.

The SDR is an essential document for gathering information about, *inter alia*, a project or fund's participants; potential impact of a project or fund on the U.S. economy and employment; the history of a primary project sponsor's owners and officers; and compliance with the FCPA and similar anti-corruption laws. The SDR also incorporates the forms for required anti-lobbying disclosures and the consents required for OPIC to conduct tax and credit checks during the credit review process.

Sponsor Disclosure Reports are U.S. government forms that must be periodically reviewed and approved by the Office of Management and Budget ("OMB"). OPIC sponsors and borrowers should be aware that OPIC SDRs may, from time to time, be revised by OPIC to reflect best practices. ***Sponsors should be aware that misrepresentations or failure to disclose relevant information may result in criminal prosecution pursuant to 22 USC 2197(n), as well as a the termination of a commitment or declaration of a loan default.***

OPIC's SDR has a page devoted solely to "Corrupt Practices Laws Certifications." The SDR contains a certification that project sponsors have the necessary internal management and accounting practices in place to ensure compliance with all applicable anti-corruption laws. The SDR also requires that the project sponsors report FCPA and other corrupt practices law investigations and convictions, and certify that the project will be carried out in compliance with applicable laws pertaining to corrupt practices.

B. Finance commitments and loan documentation

Certifications related to corrupt practices laws are also required in OPIC commitment letters and loan documentation. (Certifications are also referred to in OPIC loan documentation as "Representations," "Warranties," or "Covenants"). For example, the standard form of commitment letter for OPIC's loan guaranty program requires the sponsors, the project company and their respective officers, directors, employees and agents to represent that the project company is conducting its business in compliance with all applicable corrupt practices laws. Similar certifications also appear in OPIC finance and loan agreements. OPIC also requires that it shall have unfettered access to documents necessary for the investigation of allegations of fraud or corruption and the availability of employees and agents to respond to questions.

Sponsors should note that certifications in commitments and loan documents made to OPIC regarding corrupt practices and other laws will remain in place over the life of the OPIC loan. Any representation or warranty made in any financing document that proves to be incorrect can result in a loan default. A loan default may also result if the Borrower fails to comply with any agreement or covenant in a financing document, including a failure to maintain adequate internal controls to prevent a violation of the FCPA or other corrupt practices laws. Sponsors and borrowers are strongly encouraged to carefully review and fully understand all required certifications before they sign OPIC documents.

C. Insurance applications and contracts

Although SDRs are not used in OPIC's insurance program, applications for political risk insurance contain a number of similar investor representations that address compliance with the FCPA and other anti-corruption laws. In addition,

the investor (insured party) is asked to certify that the project has been established in compliance with all applicable laws pertaining to corrupt practices.

OPIC is prohibited by Section 237(l) of the Foreign Assistance Act of 1961, as amended, from paying compensation for an insurance claim where the preponderant cause of the covered insured event is a violation of the FCPA or other applicable corrupt practices laws. All OPIC insurance contracts reflect this prohibition.

3. General OPIC Anti-corruption policies and procedures

a) OPIC requires all project companies to have an anticorruption compliance program in place that is satisfactory to OPIC. For preliminary guidance on how to develop and effective program, see *Development of an Effective Compliance Program* below.

b) If the Agency receives *allegations* that a firm, entity or individual receiving OPIC finance or insurance support, or any affiliate, officer, employee or ten percent (10%) or greater equity holder of any such firm, entity or individual, has engaged in an act of fraud or corruption in connection with an OPIC project, OPIC may request an explanation of the allegations from the appropriate party. If OPIC determines that the allegations are "*credible,"*[1] OPIC will refer the matter to DOJ and/or other appropriate law enforcement authorities. In addition, OPIC may:

i) review the firm's anti-corruption compliance program, and request a written remediation plan and;

ii) if reasonable remedial measures do not occur within a time period that OPIC considers reasonable, decide to suspend or cancel, and/or accelerate repayment of a loan or insurance contract, or a portion of the loan;

iii) decide not to provide support for any other pending or future proposal by the same party;

iv) request that the project company seek recovery of any identified corrupt payments made in connection with the OPIC project;

vi) take other actions as deemed appropriate under the circumstances.

c) OPIC reserves the right to not do business prospectively with any person or entity that is *convicted* of an FCPA violation in regard to another project not supported by OPIC. OPIC reserves the right to not do business prospectively with any person or entity convicted of a violation of any local anti-corruption law. This

[1] OPIC's General Counsel shall determine whether there is credible evidence to warrant taking any of the above referenced actions. This determination shall be documented in a memorandum to OPIC's President and CEO, who shall make the final decision regarding potential OPIC actions.

prohibition would apply to the officers, affiliates and equity holders of more than ten percent (10%) of a convicted entity.

In the event of a conviction under the FCPA, OPIC would also follow the procedures set forth in the OPIC regulations relating to the FCPA (*see* 22CFR Part 709). These procedures call for the General Counsel to confirm the conviction, and that it was entered for an offense relating to an OPIC-supported project. After providing the convicted party with an opportunity to comment, OPIC would consider whether a suspension would be appropriate under the circumstances, and in the best interests of national security. Such a suspension would prevent the convicted individual or entity from receiving any additional support.

d) OPIC reserves the right to not do business prospectively with any person or entity that appears on a debarment list of any other international financial institution including the World Bank. This prohibition also applies to the officers, affiliates and equity holders of more than ten percent (10%) of a convicted entity.

The President and CEO of OPIC will review matters covered by paragraphs b) and c) above, and based on consideration of a report from OPIC's General Counsel, which report shall note mitigating circumstances and include a discussion of any remediation efforts, shall make a debarment determination. In connection with the production of this report regarding a convicted firm, OPIC reserves the right to review the firm's proposed remediation plan and general anti-corruption compliance program.

e) OPIC may declare an event of default and accelerate a loan if the borrower is convicted under the FCPA or other applicable corrupt practices laws in connection with the project. OPIC may cancel any insurance issued to an eligible investor if there is a conviction of either the eligible investor or the foreign enterprise in connection with the project.

f) OPIC shall consider acceptable evidence, such as a local counsel opinion (already required in connection with most OPIC finance closings), which identifies any local law anti-corruption violations (convictions) of project companies and their key officers, directors and shareholders.

g) OPIC has issued regulations that prescribe the procedure under which individuals and companies may be suspended from eligibility for OPIC services for a maximum period of five (5) years because of conviction under the FCPA in connection with an OPIC project. The procedure provides that the General Counsel will review any such matter and provide a report to the President of OPIC who shall make the suspension determination after considering any mitigating circumstances or evidence that may be provided by the company under review.

OPIC'S ANTI-CORRUPTION HOTLINE [202-312-2153]

An OPIC phone line is available for the reporting of allegations of corruption and fraud in connection with OPIC-supported projects ("Hotline"). Project parties may also use the Hotline to contact the Chief Compliance Officer to answer compliance questions. Additional information regarding the Hotline is available on OPIC's public website at www.opic.gov.

EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE ("EITI")

OPIC strongly endorses the principles of the Extractive Industries Transparency Initiative ("EITI") and encourages OPIC clients with projects in the extractive industries to agree to implement EITI guidelines. More information on the EITI can be found on its website at www.eitransparency.org.

The EITI supports improved governance in resource rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining. The EITI is a multi-stakeholder initiative, with partners from governments, international organizations, companies, NGOs, investors, and business and industrial organizations. Partners from all these groups agreed to a "Statement of Principles and Agreed Actions" with accompanying statements of support. Over 20 countries have committed to EITI principles and criteria since the Lancaster House Conference in 2003. Some countries are only beginning to launch the process, while others have published revenue and payments data.

As noted on the EITI's website: "The primary beneficiaries of EITI are the governments and citizens of resource-rich countries. Knowing what governments receive and what companies pay is a critical first step to holding decision-makers accountable for the use of those revenues. Resource-rich countries implementing EITI can benefit from an improved investment climate by providing a clear signal to investors and the international financial institutions that the government is committed to strengthening transparency and accountability over natural resource revenues. Companies and investors, by supporting EITI in countries where they operate, can help mitigate investment risk: corruption creates political instability, which in turn threatens investments which are often capital intensive and long-term in nature. Civil society can benefit from an increased amount of information in the public domain about those revenues that governments manage on behalf of citizens, thereby increasing accountability and improving transparency. In summary, implementing EITI as part of a program of improved governance will help to ensure that oil, gas, and mining revenues contribute to sustainable development and poverty reduction."

Given the potential for participation in EITI to reduce the risks associated with corruption, OPIC will consider EITI participation by project companies when setting insurance rates, finance fees, and when determining whether to proceed with a project. A copy of EITI's principles and criteria is found at Annex A.

THE ROLE OF THE PRIVATE SECTOR IN COMBATING CORRUPTION

Practices that were once seen as an inevitable part of doing business in many parts of the world are becoming increasingly unacceptable. More stringent domestic laws and international conventions such as the 1999 OECD Anti-Bribery Convention and the soon to be ratified United Nations Convention against Corruption are compelling companies to develop new anti-bribery policies or to review existing ones. The high-profile corporate scandals of recent years have made companies increasingly aware that corrupt practices pose serious and costly risks to their reputation and sustainability. This understanding, coupled with a growing public expectation of accountability and probity in the corporate sector, are putting added pressure on companies to articulate and live up to more ethical business practices.

OPIC strongly endorses the business principles ("Business Principles") developed by Transparency International and published in June, 2003. The Business Principles are the product of a cooperative effort drawn from companies, academia, trade unions and non-governmental bodies. The Business Principles provide a model for companies seeking to adopt a comprehensive anti-bribery program. OPIC encourages companies to use the Business Principles as a starting point for developing their own anti-bribery programs or as a benchmark for existing ones.

The key to the Business Principles is a commitment by the enterprise to implement an effective compliance program to counter bribery. OPIC expects sponsors and investors to devise and implement an anti-corruption compliance program that is tailored to the size of their entity and the uniqueness of its business activities.

DEVELOPMENT OF AN EFFECTIVE COMPLIANCE PROGRAM

As noted above, OPIC requires all of its project companies to have effective anti-corruption compliance programs in place that are satisfactory to OPIC. In connection with any transaction, OPIC may review the firm's anti-corruption compliance program. An effective corporate compliance program is one that ultimately yields intended results: education, detection, and deterrence. To be effective, a compliance program must receive the support of upper management, and must be enforced at all levels of the organization.

For assistance in developing an effective compliance program, OPIC encourages its clients to review Transparency International's suite of tools, including a comprehensive "Tool Kit," which provides additional background and practical information for those wishing to implement a compliance program or review their own anti-corruption processes. The Tool Kit provides guidance to assist both large companies and SME's in designing an anti-bribery compliance program that is harmonized with a company's unique culture, risk profile, and existing mechanisms, and provides useful examples of compliance programs from three small to medium sized manufacturing companies and three large companies.

There is official recognition that the necessary specific compliance activities should be different depending on the size of the company involved. Smaller companies can satisfy expectations with less extensive compliance programs so long as those programs are designed to be effective in the specific circumstances of the companies involved. Accordingly, the requisite degree of formality of a program to prevent and detect violations of law will vary with the size of the organization. The larger the organization, the more formal the program typically should be.

The specific policies and guidelines incorporated into a compliance program will vary from company to company, depending on a number of factors, including, e.g., geographical and industry risks, corporate structure and culture. The bare bones components of effective anti-corruption compliance guidelines, however, remain consistent. They include:

- a short policy statement from senior management;
- a statement of the scope of the guidelines (i.e., covered parties);
- designation of responsible individuals;
- overview of applicable anti-corruption laws including the FCPA;
- guidelines on specific issues such as gifts, entertainment, and promotional expenditures; travel and travel related expenses; political and charitable contributions;
- a discussion on facilitating payments and conflicts of interest;
- guidance on red flags to be on the lookout for;
- due diligence procedures and an overview of risk assessment tools;
- safeguard policy;
- procedures for monitoring third party relationships;
- provision for accounting and record keeping requirements; and
- mechanisms for reporting potential violations and responding to problems.

An effective anti-corruption compliance program will help companies to proactively protect themselves against FCPA violations. The "Federal Sentencing Guidelines for Organizations," issued by the U.S. Sentencing Commission and applicable to criminal violations of all federal statutes such as the FCPA, require federal courts handing down criminal sanctions to take into account the existence or absence of effective corporate compliance programs. The presence of an effective compliance program can significantly reduce a company's sentence, while the absence of such a program can increase the sentence.

WORK OF THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT ("OECD")

The OECD groups 30 member countries sharing a commitment to democratic government and the market economy. With active relationships with some 70 other countries and NGOs, it has a global reach. Best known for its publications and statistics, its work covers economic and social issues. The OECD plays a prominent role in fighting global corruption, and fostering good governance and corporate responsibility.

Multinational enterprises investing in countries characterized by weak or non-existent government need to take special care in handling a range of risks and ethical dilemmas not usually encountered in countries with stronger governance arrangements. Around 900 million people, or approximately fifteen percent (15%) of the world's population, live in so-called 'weak governance' zones, particularly in sub-Saharan Africa where governments are unwilling or unable to assume their responsibilities in relation to public administration and protecting human rights.

In 2006, the OECD designed a "Risk Awareness Tool" to help companies think about the risks and dilemmas they may face in such zones and how they can respond to them. The Risk Awareness Tool was developed as part of work by the OECD Investment Committee, which groups all 30 OECD countries and a number of non-OECD participants together. It also responds to a request by participants in the 2005 G8 Gleneagles Summit that called for "OECD guidance for companies operating in zones of weak governance."

One of the OECD Investment Committee's principal instruments is the OECD Guidelines for Multinational Enterprises ("Guidelines"), a government-backed code of conduct for international business widely used as a yardstick for responsible business conduct, including in developing countries. Consistent with the objectives and principles of the Guidelines, which are voluntary rather than binding, the Risk Awareness Tool is non-prescriptive but sets out a range of questions for companies to consider in such areas as: 1) obeying the law and observing international instruments; 2) heightened care in managing investments; 3) knowing business partners and clients; 4) dealing with public sector officials; and 5) speaking out about wrongdoing.

The Risk Awareness Tool has benefited from inputs from business, trade unions and civil society representatives from both OECD and non-OECD countries and economies. It also draws on the work of other OECD bodies, notably in the areas of public governance, anti-corruption and development assistance for conflict prevention. In the next phase, business and stakeholders will work with the OECD to identify sources of practical experience in meeting the challenges that it addresses.

OPIC encourages all foreign investors to use the OECD Guidelines and the Risk Awareness Tool to assist them in adopting best practices.

COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT ("FCPA")

OPIC's Responsibility

OPIC has both a statutory responsibility to help ensure compliance with the FCPA, and a proactive commitment to fulfill that responsibility. OPIC works with the DOJ to prevent compliance problems and to report violations. You, as a prospective recipient of OPIC support, will be asked, through the sponsor disclosure report ("SDR"), insurance application, loan, or financing agreement, to demonstrate that your company does not violate the FCPA and/or foreign anticorruption laws.

OPIC's statute also provides that no payments be made under its insurance or reinsurance contracts for a loss with respect to a project if the preponderant cause of the loss was an act by an investor, a majority owner of an investor, an agent of an investor, or a controlling person in violation of the FCPA. Such a determination can only be made in a final judgment by a court of law. OPIC's financing and loan agreements also provide appropriate remedies and protections for the agency.

Prevention Measures of Businesses

Since 1977, U.S. law has prohibited offers, promises, or payments to foreign officials, political parties, political officials, and candidates, to secure business. A company or individual running afoul of the FCPA, or recently enacted anticorruption laws of other countries, may be subject to criminal charges and substantial fines. Companies in these situations may also face loss of financing and insurance from national or international institutions, and debarment from public contracting. FCPA violators are also likely to sustain serious damage to their reputations and their ability to compete for international business.

The following summary of the principal provisions of the FCPA is intended to assist you in assuring that your company will comply with the FCPA. Developing a comprehensive anticorruption compliance program as part of your company's standard business practice – and that of your foreign subsidiaries – may limit your company's risk and help avoid potential costs. An anti-corruption compliance strategy can also help to protect your company's reputation, minimize its FCPA liability, and maintain its long-term viability.

The following information is intended to provide a general description of the FCPA and is not intended to substitute for the advice of private counsel on specific issues related to the FCPA. Moreover, this information is not intended to set forth the present enforcement intentions of the DOJ, the U.S. Securities and Exchange Commission ("SEC"), or any other U.S. Government agency with respect to particular fact situations.

Reporting Corruption

In many parts of the world, businesses are becoming more proactive in asking their respective home and host governments to assist in their efforts to create, through diplomatic channels, anti-corruption mechanisms to root out systemic corruption.

If you, or your company, have encountered corrupt practices in a particular country, or have been particularly disadvantaged by bribery perpetrated by another competitor or by another foreign business entity, or if a foreign official solicits a bribe from you, you should inform the appropriate economic or commercial officer or section at the local U.S. Embassy or consulate.

You also can report this information to OPIC through its Hotline or to the Bribery Hotline maintained by the U.S. Department of Commerce's ("Commerce") International Trade Administration at (202) 482-3723, or on the Internet at . *www.tcc.mac.doc.gov.*

Questions regarding the FCPA may be directed to the Fraud Section of the DOJ at (202) 514-7023, or via e-mail at *FCPA.Fraud@usdoj.gov.*

General guidance to U.S. exporters about international developments concerning the FCPA and OECD Bribery Convention is also provided by the Office of Chief Counsel for International Commerce, Commerce, at (202) 482-0937 and on its website at www.osec.doc.gov/*ogc/occic/tabi.html.*

FCPA Compliance Responsibility

The 1988 Trade Act directed the Attorney General to provide guidance concerning the DOJ's enforcement policy with respect to the FCPA to potential exporters and small businesses that are unable to obtain specialized counsel on issues related to the FCPA. The guidance is limited to responses to requests under the DOJ's Foreign Corrupt Practices Act Opinion Procedure, and to general explanations of compliance responsibilities and potential liabilities under the FCPA. The following information constitutes the DOJ's general explanation of the FCPA.

U.S. firms seeking to do business in foreign markets must be familiar with the FCPA. In general, the FCPA prohibits corrupt payments to foreign officials for the purpose of obtaining or keeping business. The DOJ is the chief enforcement agency, with a coordinated role played by the SEC. The Office of General Counsel of Commerce also answers general questions from U.S. exporters concerning the FCPA's basic requirements and constraints.

Enforcement

The DOJ is responsible for all criminal enforcement and for civil enforcement of the antibribery provisions with respect to domestic concerns and foreign companies and nationals. The SEC is responsible for civil enforcement of the antibribery provisions with respect to issuers. Summaries of recent U.S. anti-corruption judicial decisions and enforcement actions can be found at Annex C.

Antibribery Provisions

Basic Prohibitions

The FCPA makes it unlawful to bribe foreign government officials to obtain or retain business. With respect to the basic prohibition, there are five elements, which must be met to constitute a violation of the Act:

1. Who. The FCPA potentially applies who to *any* individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm.

Individuals and firms may also be penalized if they order, authorize, or assist someone else to violate the antibribery provisions, or if they conspire to violate those provisions.

Under the FCPA, U.S. jurisdiction over corrupt payments to foreign officials depends upon whether the violator is an issuer, a "domestic concern," or a foreign national or business.

An issuer is a corporation that has issued securities that have been registered in the United States or who is required to file periodic reports with the SEC.

A "domestic concern" is any individual who is a citizen, national, or resident of the United Stares, or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship having its principal place of business in the United States, or which is organized under the laws of a State of the United States, or a territory, possession, or commonwealth of the United States.

Issuers and domestic concerns may be held liable under the FCPA under *either* territorial or nationality jurisdiction principles. For acts taken within the territory of the United States, issuers and domestic concerns are liable if they undertake an act in furtherance of a corrupt payment to a foreign official using the U.S. mails or other means or instrumentalities of interstate commerce. Such means or instrumentalities include telephone calls, facsimile transmissions, wire transfers, or interstate or international travel. In addition, issuers and domestic concerns may be held liable for any act in furtherance of a corrupt payment taken *outside* the United States. Thus, a U.S. company or national may be held liable for a corrupt payment authorized by employees or agents operating entirely outside the United Stares, using money from foreign bank accounts, and without any involvement by personnel located within the United States.

Prior to 1998, foreign companies, with the exception of those who qualified as "issuers," and foreign nationals were not covered by the FCPA. The 1998 amendments expanded the FCPA to assert territorial jurisdiction over foreign companies and nationals. A foreign company or person is now subject to the FCPA if it causes, directly or through agents, an act in furtherance of the corrupt payment to take place within the territory of the United States. There is, however, no requirement that such act make use of the U.S. mails or other means or instrumentalities of interstate commerce.

Finally, U.S. parent corporations may be held liable for the acts of foreign subsidiaries where they authorized, directed, or controlled the activity in question, as can U.S. citizens or residents, themselves "domestic concerns," who were employed by, or acting on behalf of, such foreign-incorporated subsidiaries.

2. Corrupt Intent. The person making or authorizing the payment must have a corrupt intent, and the payment must be intended to induce the recipient to misuse his or her official position to direct business wrongfully to the payer or to any other person. Note that the FCPA does not require that a corrupt act *succeed* in its purpose. The *offer or promise* of a corrupt payment can constitute a violation of the statute. The FCPA prohibits any corrupt payment intended to *influence* any act or decision of a foreign official in his or her official capacity to *induce* the official to do or omit to do any act in violation of his or her lawful duty, to *obtain* any improper advantage, or to *induce* a foreign official to use his or her influence improperly to affect or influence any act or decision.

3. Payment. The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer), money or anything of value.

4. Recipient. The prohibition extends only to corrupt payments to *a foreign official, a foreign political party* or *party official,* or any *candidate* for foreign political office. A "foreign official" means any officer or employee of a foreign government, a public international organization, or any department or agency thereof, or any person acting in an official capacity.

   You should consider utilizing the DOJ's Foreign Corrupt Practices Act Opinion Procedure for particular questions as to the definition of a "foreign official," such as whether a member of a royal family, a member of a legislative body, or an official of a state-owned business enterprise would be considered a "foreign official." In addition, you should consult the list of public international organizations covered under the FCPA that is available on the DOJ's FCPA website at www.usdoj.gov/criminal/fraud.html.

   The FCPA applies to payments to *any* public official, regardless of rank or position. The FCPA focuses on the *purpose* of the payment instead of the particular duties of the official receiving the payment, offer, or promise of payment, and there are exceptions to the antibribery provision for "facilitating payments for routine governmental action" (see below).

5. Business Purpose Test. The FCPA prohibits payments made in order to assist the firm in *obtaining* or *retaining business* for or with, or *directing business* to, any person. The DOJ interprets "obtaining or retaining business" broadly, such that the term encompasses more than the mere award or renewal of a contract. It should be noted that the business to be obtained or retained does not need to be with a foreign government or foreign government instrumentality.

Third Party Payments

The FCPA prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official. *The term "knowing" includes conscious*

disregard and deliberate ignorance. The elements of an offense are essentially the same as described above, except that in this case the "recipient" is the intermediary who is making the payment to the requisite "foreign official."

Intermediaries may include joint venture partners or agents. To avoid being liable for corrupt third-party payments, U.S. companies are encouraged to exercise due diligence, and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives. Such due diligence may include investigating potential foreign representatives and joint venture partners to determine if they are, in fact, qualified for the position, whether they have personal or professional ties to the government, the number and reputation of their clientele, their reputation with the U.S. Embassy or consulate, and with local bankers, clients, and other business associates.

In addition, in negotiating a business relationship, the U.S. firm should be aware of so-called "red flags," i.e., unusual payment patterns or financial arrangements, a history of corruption in the country, a refusal by the foreign joint venture partner or representative to provide a certification that it will not take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official, and not perform any act that would cause the U.S. firm to be in violation of the FCPA, unusually high commissions, lack of transparency in expenses and accounting records, apparent lack of qualifications or resources on the part of the joint venture partner or representative to perform the services offered, and whether the joint venture partner or representative has been recommended by an official of the potential governmental customer.

When entering into a joint venture or other contractual relationship with a business associate, employee or relative of a public official, OPIC sponsors and project companies should be particularly cautious. Contracts, purchase orders, consulting arrangements and equity interests should not be used as quid-pro-quo to influence, induce or obtain a favorable decision by a foreign public official. These vehicles should also not be used as a means of channeling payments or benefits to foreign public officials or to their business associates or relatives.

You should seek the advice of counsel and consider utilizing the DOJ's Foreign Corrupt Practices Act Opinion Procedure for particular questions relating to third party payments.

Permissible Payments and Affirmative Defenses

The FCPA contains an explicit exception to the bribery prohibition for "facilitating payments" for "routine governmental action," and provides affirmative defenses, which can be used to defend against alleged violations of the FCPA.

Facilitating Payments for Routine Governmental Actions

There is an exception to the antibribery prohibition for payments to facilitate or expedite performance of a "routine governmental action." The statute lists the following

examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing phone service, power and water supply; loading and unloading cargo, or protecting perishable products; and scheduling inspections associated with contract performance or transit of goods across country.

Actions "similar" to these are also covered by this exception. If you have a question about whether a payment falls within the exception, you should consult with counsel. You should also consider whether to utilize the DOJ's Foreign Corrupt Practices Opinion Procedure that provides that any U.S. company or national may request a statement of the DOJ's present enforcement intentions under the antibribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure may be found at 28 CFR Part 80. Under this procedure, the Attorney General will issue an opinion in response to a specific inquiry from a person or firm within thirty (30) days of the request.

"Routine governmental action" does not include any decision by a foreign official to award new business or to continue business with a particular party.

Affirmative Defenses

A person charged with a violation of the FCPA's antibribery provisions may assert as a defense that the payment was lawful under the written laws of the foreign country, or that the money was spent as part of demonstrating a product or performing a contractual obligation.

Whether a payment was lawful under the written laws of the foreign country may be difficult to determine. You should consider seeking the advice of counsel or utilizing the DOJ's Foreign Corrupt Practices Act Opinion Procedure when faced with an issue of the legality of such a payment.

Moreover, because these defenses are "affirmative defenses," the defendant is required to show in the first instance that the payment met these requirements. The prosecution does not bear the burden of demonstrating in the first instance that the payments did not constituted this type of payment.

FCPA Sanction Against Bribery

Criminal

The following criminal penalties may be imposed for violations of the FCPA's antibribery provisions: corporations and other business entities are subject to a fine of up to $2,000,000; officers, directors, stockholders, employees, and agents are subject to a fine of up to $100,000 and imprisonment for up to five (5) years. Moreover, under the Alternative Fines Act, these fines may actually be quite higher — the actual fine may be up to twice the benefit that the defendant sought to obtain by making the corrupt

payment. You should also be aware that fines imposed on individuals might not be paid by their employer or principal.

Civil

The Attorney General or the SEC, as appropriate, may bring a civil action for a fine of up to $10,000 against any firm *as well* as any officer, director, employee, or agent of a firm, or stockholder acting on behalf of the firm who violates the anti-bribery provisions. In addition, in an SEC enforcement action, the court may impose an additional fine not to exceed the greater of: (i) the gross amount of the pecuniary gain to the defendant as a result of the violation, or (ii) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from $5,000 to $100,000 for a natural person and $50,000 to $500,000 for any other person.

The Attorney General or the SEC, as appropriate, may also bring a civil action to enjoin any act or practice of a firm whenever it appears that the firm (or an officer, director, employee, agent, or stockholder acting on behalf of the firm) is in violation (or about to be) of the anti-bribery provisions.

Other Governmental Action

Under guidelines issued by OMB, a person or firm found in violation of the FCPA may be barred from doing business with the Federal Government. *Indictment alone can lead to suspension of the right to do business with the Government.* The President has directed that no executive agency shall allow any party to participate in any procurement or non-procurement activity if any agency has been debarred, suspended, or has otherwise excluded that party from participation in a procurement or nonprocurement activity.

In addition, a person or firm found guilty of violating the FCPA may be ruled ineligible to receive export licenses; the SEC may suspend or bar persons from the securities business and impose civil penalties on persons in the securities business for violations of the FCPA; the Commodity Futures Trading Commission and OPIC both provide for possible suspension or debarment from agency programs for violation of the FCPA; and a payment made to a foreign government official that is unlawful under the FCPA cannot be deducted under the tax laws as a business expense. OPIC's statute also provides that no payments can be made under its insurance or reinsurance contracts for loss with respect to a project, if the preponderant cause of the loss was an act by an investor, a majority owner of an investor, an agent of an investor, or a controlling person, and a court has issued a final judgment that the act was a violation of the FCPA.

Private Cause of Action

Conduct that violates the antibribery provisions of the FCPA may also give rise to a private cause of action for treble damages under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), or to actions under other federal or state laws. For example, an action might be brought under RICO by a competitor who alleges that the bribery caused the defendant to win a foreign contract.

Guidance from the Government

As mentioned above, the DOJ has established a Foreign Corrupt Practices Act Opinion Procedure by which any U.S. company or national may request a statement of the DOJ's present enforcement intentions under the antibribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure are found at 28 CFR Part 80. Under this procedure, the attorney general will issue an opinion in response to a specific inquiry from a person or firm within thirty (30) days of the request. (The thirty-day period does not run until the DOJ has received all the information it requires to issue the opinion.) Conduct for which the DOJ has issued an opinion stating that the conduct conforms with current enforcement policy will be entitled to a presumption, in any subsequent enforcement action, of conformity with the FCPA.

Copies of releases issued regarding previous opinions are available on the Department of Justice's FCPA website. **http://www.usdoj.gov/criminal/fraud/fcpa.html**

For further information from the Department of Justice about the FCPA and the Foreign Corrupt Practices Act Opinion Procedure, contact Mark Mendelsohn, Deputy Chief, or Deborah Gramiccioni, Trial Attorney, Fraud Section, Criminal Division, U.S Department of Justice, P.O. Box 28188, McPherson Square, Washington, D.C. 20038, (202) 514-7023.

Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information from the Department of Commerce about the FCPA, contact Eleanor Roberts Lewis, Chief Counsel for International Commerce, Kathryn Nickerson, Senior Counsel, or Arthur Aronoff, Senior Counsel, Office of the Chief Counsel for International Commerce, U.S. Department of Commerce, Room 5882, 14th Street and Constitution Avenue, N.W, Washington, D.C. 20230, (202) 482-0937.

The material reflected herein on the FCPA is derived in part from the U.S. Department of State's publication *Fighting Global Corruption: Business Risk Management*.

ANNEX A

EITI Principles and Criteria

1. We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
2. We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
3. We recognize that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
4. We recognize that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
5. We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
6. We recognize that achievement of greater transparency must be set in the context of respect for contracts and laws.
7. We recognize the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
8. We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
9. We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
10. We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
11. We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
12. In seeking solutions, we believe that all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organizations, financial organizations, investors, and non-governmental organizations.

The EITI Criteria

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

ANNEX B

HELPFUL WEB LINKS

1) DOJ website on the FCPA and other related international agreements. Site contains recent enforcement cases.

http://www.usdoj.gov/criminal/fraud/fcpa.html

Questions regarding the FCPA may be directed to the Fraud Section of the U.S. Department of Justice at (202) 514-7023, or via e-mail at:

FCPA.Fraud@usdoj.gov.

2) OECD website contains information on the OECD Convention on Bribery, including steps taken by contracting parties to implement the Convention. Site includes summaries of enforcement actions taken by each of the contracting parties.

http://www.oecd.org

The OECD Risk Assessment Tool for investors can be downloaded at:

http://www.oecd.org/daf/investment/guidelines

3) Transparency International's "tool kit" which provides additional background and practical information for those wishing to implement its Business Principles or review their own anti-corruption processes.

www.transparency-usa.org/Toolkit2d.html.

4) Bribery Hotline maintained by the U.S. Department of Commerce's International Trade Administration at (202) 482-3723, or on the Internet.

www.tcc.mac.doc.gov.

5) General guidance to U.S. exporters about international developments concerning the FCPA and OECD Bribery Convention is also provided by the Office of Chief Counsel for International Commerce, U.S. Department of Commerce, at (202) 482-0937 and on its website.

www.osec.doc.gov*/ogc/occic/tabi.html*.

6) The Extractive Industries Transparency Initiative ("EITI") website is:

www.eitransparency.org.

7) U.S. Sentencing Commission, Federal Sentencing Guidelines Manual (updated printed version published annually by West Group; is available online at the Sentencing Commission's website at:

www.ussc.gov/guidelin.htm

8) OPIC website: **www.opic.gov**

ANNEX C

OVERVIEW OF SOME RECENT ANTI-CORRUPTION U.S. JUDICIAL DECISIONS AND ENFORCEMENT ACTIONS*

United States v. Viktor Kozeny, Frederic Bourke, Jr, and David Pinkerton: On October 6, 2005, a grand jury in New York indicted Viktor Kozeny, Frederic Bourke Jr., and David Pinkerton for allegedly participating in a massive scheme to bribe senior government officials in Azerbaijan to ensure that those officials would privatize the State Oil Company of Azerbaijan ("SOCAR") and allow Kozeny, Bourke, Pinkerton and others to share in the anticipated profits arising from that privatization. The indictment charges that Kozeny, acting on his own and as an agent of Bourke, Pinkerton and others, made a series of corrupt payments and promises to pay to a senior official of the Government of Azerbaijan, a senior official of SOCAR, and to senior officials of the State Property Committee, the agency responsible for administrating the privatization program. The defendants are also charged with related crimes, including money laundering. Kozeny was arrested in The Bahamas and a U.S. request for his extradition is currently pending. Bourke and Pinkerton voluntarily surrendered to the U.S. Federal Bureau of Investigation and have been arraigned. Three other individuals previously pleaded guilty in connection with their participation in this bribery scheme.

SEC v. Yaw Osei Amoako (Civil Action No. 05-4284, GEB, D.N.J.): On September 1, 2005 the Securities and Exchange Commission filed a civil enforcement action in the U.S. District Court for the District of New Jersey against Yaw Osei Amoako, the former Regional Director for Africa of ITXC Corp., alleging that he violated the anti-bribery provisions of the FCPA, as amended, which is codified as Section 30A of the Securities Exchange Act of 1934. The Commission's complaint alleges that Amoako bribed a senior official of the government-owned telephone company in Nigeria, known as Nigerian Telecommunications Ltd., in order to obtain a lucrative contract for ITXC. The contract was necessary for ITXC to be able to transmit telephone calls to individuals and businesses in Nigeria. According to the complaint, Amoako paid the Nitel official a total of $166,541.31 in bribes between November 2002 and May 2004, and ITXC made $1,136,618 in net profits from the contract. In 2004, ITXC merged with Teleglobe International Holdings Ltd. The Commission seeks to have the Court enjoin Amoako from any future violations of the FCPA, require him to disgorge all ill-gotten gains derived from his misconduct, and order him to pay a civil money penalty. The Commission's investigation is continuing.

United States v. Titan Corp. (S.D.CA. 2005): On March 1, 2005, Titan Corporation, a San Diego-based military intelligence and communications company, pleaded guilty to violating the anti-bribery and books and records provisions of the FCPA and assisting in the filing of a false tax return. The company also settled an enforcement action with the SEC at the same time. Titan was sentenced to pay a criminal fine of $13,000,000 and serve three years' probation. Titan was ordered to adopt a strict FCPA compliance

program. Titan also agreed to pay $15.4 million in the parallel civil case filed by the SEC. The combined civil/criminal penalty of $28 million imposed is the largest FCPA penalty for a public company.

The charges stem from Titan's corrupt payment of more than $2 million towards the election of Benin's then-incumbent President, and allegations that these funds were used to reimburse Titan's agent for the purchase of T-shirts adorned with the President's picture and instructions to vote for him in the upcoming election. According to the complaint, Titan made these payments to assist the company in its development of a telecommunications project in Benin, and to obtain the Benin government's consent to an increase in the percentage of Titan's project management fees for that project.

Micrus Corporation: On February 28, 2005, Micrus Corporation, a privately held company based in Sunnyvale, California and its Swiss subsidiary Micrus S.A., entered into a two-year deferred prosecution agreement with the DOJ in which Micrus and its subsidiary admitted paying more than $105,000 to doctors employed at publicly owned and operated hospitals in the French Republic, the Republic of Turkey, the Kingdom of Spain and the Federal Republic of Germany in return for the hospital's purchase of Micrus' medical devices; agreed to pay $450,000 in penalties; agreed to implement a rigorous compliance program with a monitor for a period of three years; and agreed to cooperate fully in the investigation by the DOJ.

United States v. Monsanto Co. (D.D.C., 2005): On January 6, 2005, Monsanto Company entered into a deferred prosecution agreement with the DOJ in which it agreed to pay a $1,000,000 penalty and admit to violations of the FCPA involving a payment to an Indonesian official to induce him (unsuccessfully) to repeal an environmental regulation, and a related false books and records entry. Pursuant to the agreement, the Government will seek the dismissal of the charges in three years provided the company implements a strict compliance program and continues to cooperate with the Government's investigation. Monsanto also agreed to hire an independent compliance monitor to meet its obligations. Related complaints and orders were filed by the SEC and settled at the same time.

The SEC charged that from at least June 2002 through June 2004, InVision employees, sales agents and distributors pursued transactions to sell explosive detection machines to airports in China, the Philippines, and Thailand. According to the Commission, in each of these transactions, InVision was aware of a high probability that its foreign sales agents or distributors made or offered to make improper payments to foreign government officials in order to obtain or retain business for InVision. Despite this, InVision allowed the agents or distributors to proceed on its behalf, in violation of the FCPA. In addition, the SEC charged that, from 1997 to 2002, Monsanto inaccurately recorded, or failed to record, in its books and records approximately $700,000 of illegal or questionable payments made to at least 140 current and former Indonesian government officials and their family members.

InVision Technologies Inc.: On December 6, 2004, InVision Technologies, Inc., a U.S. company, entered into a two-year deferred prosecution agreement with the DOJ in which it admitted to violations of the FCPA in Thailand, China, and the Philippines; agreed to pay $800,000 in penalties; agreed to implement a rigorous compliance program with a monitor; and agreed to cooperate fully in the ongoing parallel investigations by the DOJ and the SEC. General Electric Company, which acquired InVision after the criminal conduct, agreed to ensure compliance by InVision of InVision's obligations under its agreement and to effect FCPA compliance programs within GE's new InVision business. GE and InVision conducted an internal investigation of potential FCPA violations discovered in the course of acquisition due diligence and voluntarily disclosed their findings to the DOJ and the SEC. Related complaints and orders were filed by the SEC.

Securities and Exchange Commission v. Schering-Plough Corporation (D.D.C 2004): On June 16, 2004, a federal court in Washington, D.C. entered a Final Judgment against Schering-Plough, a pharmaceutical company, compelling it to pay a civil penalty in the amount of $500,000 for violations of the FCPA's books and records and internal controls provisions. Further, as a result of these violations, the SEC ordered the company to appoint an independent consultant to review its internal controls. Both the Court's Final Judgment and the Commission's Order were the result of a settlement with the company in which it neither admitted nor denied the allegations. The Commission's complaint alleges that between February 1999 and March 2002 one of Schering-Plough's foreign subsidiaries, Schering-Plough Poland, made improper payments to a charitable organization called the Chudow Castle Foundation. The Foundation was headed by an individual who was the Director of the Silesian Health Fund during the relevant time. The health fund was a Polish governmental body that, among other things, provided money for the purchase of pharmaceutical products and influenced the purchase of those products by other entities, such as hospitals, through the allocation of health fund resources. According to the complaint, Schering-Plough Poland paid 315,800 zlotys (approximately $76,000) to the Chudow Castle Foundation to induce the Director to influence the health fund's purchase of Schering-Plough's pharmaceutical products.

United States v. David Kay: In December 2001, a grand jury sitting in Houston, Texas, returned an indictment charging David Kay, an officer of American Rice Inc., with violating the FCPA by allegedly authorizing bribes of Haitian customs officials. In March 2002, the grand jury returned a superseding indictment adding a second defendant, Douglas Murphy, a former officer of American Rice Inc. In April 2002, the district court dismissed the indictment, finding that the conduct alleged did not fall within the FCPA's requirement that the bribes be paid to "assist in obtaining or retaining business." The United States appealed this decision, and, in February 2004, the Court of Appeals for the Fifth Circuit reinstated the indictment United States v. Kay, 359 F.3d 738 (5th Cir. 2004). In July 2004, the United States obtained a second superseding indictment, which added a conspiracy count against both defendants and an obstruction of justice count against Murphy based on his allegedly false testimony to the SEC. On October 6, 2004, Kay and Murphy were convicted on all counts following a two-week jury trial. On June 29, 2005, the Honorable David H. Hittner, U.S. District Court Judge for the Southern District of Texas, sentenced Douglas Murphy and David Kay, two former officers of American

Rice, Inc., to prison for violating the Foreign Corrupt Practices Act. Murphy, a resident of Texas, was sentenced to 63 months in prison followed by three years of supervised release. Kay, also a resident of Texas, was sentenced to 37 months in prison followed by two years of supervised release. The defendants were released on bond pending appeal.

*** Judicial decisions and enforcement actions are reported by DOJ to the OECD on a regular basis as required by the Convention. For the most up-to-date cases, please refer to the OECD website.**